PROPOSED AMENDMENTS TO THE DISTRICT OF UTAH

DISTRICT COURT RULES OF PRACTICE

SUBMITTED BY THE COURT TO THE BAR AND THE PUBLIC FOR COMMENT

DECEMBER 2005

INTRODUCTION

The proposed amendments in this document have been approved by the Court and are being released for a sixty-day comment period. The public comment period runs from December 19, 2005 through February 17, 2006. At the conclusion of the comment period, the Court may conduct an en banc hearing. The Court welcomes responses to the proposed amendments from members of its Bar, the greater legal community, and the public. To comment, please send your responses via one of the following options:

E-mail to: **http://www.**utd_rules@utd.uscourts.gov

USPS to: **USDC Rules Amendments Comments**
Office of the Clerk
Suite 120, U.S. Courthouse
350 South Main Street
Salt Lake City UT 84101

Each proposed amendment in this document is presented first in a redline version that details what, if anything, is being proposed for deletion and what is being proposed as new, using the following editing formats.

Proposed deleted text: ~~**The District of Utah**~~

Proposed new text: **The District of Utah**

Immediately following the redline version of each amendment is a clean version that deletes the editing formats and the text proposed for deletion.

This document contains several proposed new rules. The redline version of these new rules shows the text in red. The clean version is in black.

The order of the draft amendments in this document is sequential, first by civil rule and second by criminal rule. Most of the proposed changes fall within the civil rules. The proposed changes also include the Court's ADR Plan, the relevant pages of which fall directly behind the proposed changes to DUCivR 16-2 Alternative Dispute Resolution.

Most of the proposed amendments are designed to clarify existing practice and procedure requirements. Some address administrative matters. Proposed new rules Civil 7-3 and Criminal 47-2 impose on counsel the responsibilities set forth by the Judicial Conference regarding personal data in court filings.

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CIVIL RULES

DUCivR 1-1 AVAILABILITY AND AMENDMENTS

(a) **Availability.** Copies of these rules in paper and electronic formats, as amended and with appendices, are available from the clerk's office for a reasonable charge set by the clerk. These rules also are posted on the court's internet website at http://www.utd.uscourts.gov. On admission to the bar of this court, each attorney will be provided a copy of these rules. Attorneys admitted pro hac vice will be provided a copy on request and on payment to the clerk of the fee.

(b) **Amendments to the Rules.** When amendments to these rules are proposed, notice and opportunity for public comment will be provided as directed by the court. When amendments to these rules are approved by the court, notice will be provided.

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DUCivR 3-5 CONTENT OF THE COMPLAINT

The complaint is the initial pleading that commences a civil action. It should state the basis for the court's jurisdiction, the basis for the plaintiff's claim or cause for action, and the demand for relief. The complaint should not include any motion. Any motion intended to accompany a complaint, such as a motion for a temporary restraining order, must be prepared and filed as a separate document.

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DUCivR 5-2 FILING CASES AND DOCUMENTS UNDER COURT SEAL

(a) **General Rule**. On motion of one or more parties and a showing of good cause, the court or, upon referral, a magistrate judge may order all or a portion of the documents filed in a civil case to be sealed.

(b) **Sealing of New Cases.**

(1) On Ex Parte Motion. A case may be sealed at the time it is filed upon ex parte motion of the plaintiff or petitioner and execution by the court of a written order. The case will be listed on the clerk's case index as ***Sealed Plaintiff vs. Sealed Defendant***.

(2) Civil Actions for False Claims. When an individual files a civil action on behalf of the individual and the government alleging violation of 31 U.S.C.§ 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.

(c) **Sealing of Pending Cases**. A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless the court otherwise orders, neither the clerk's automated case index nor the existing case docket will be modified.

(d) **Procedure for Filing Documents Under Seal.** Documents ordered sealed by the court or otherwise required to be sealed by statute must be placed unfolded in an envelope with a copy of the cover page of the document affixed to the outside of the envelope. The pleading caption on the cover page must include a notation that the document is being filed under court seal. The sealed document, together with a judge's copy prepared in the same manner, must be filed with the clerk. No document may be designated by any party as ***Filed under Seal*** or ***Confidential*** unless:

(1) it is accompanied by a court order sealing the document;

(2) it is being filed in a case that the court has ordered sealed; or

(3) it contains material that is the subject of a protective order entered by the court.

(e) **Access to Sealed Cases and Documents**. Unless otherwise ordered by the court, the clerk will provide access to cases and documents under court seal only on court order. Unless otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

~~**(f)** **Disposition of Sealed Documents**. Unless otherwise ordered by the court, any case file or documents under court seal that have not previously been unsealed by court order will be unsealed at the time of final disposition of the case.~~

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When the court is closed by administrative order of the chief judge, any deadlines which occur on that day are extended to the next day that the court is open.

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DUCivR 7-1 MOTIONS AND MEMORANDA

(a) **Motions**. The original and a copy of all motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Motions must set forth succinctly, but without argument, the specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.[1]

(b) **Supporting Memoranda.**

(1) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

(A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;

(B) to continue either a pretrial hearing or motion hearing;

(C) to appoint a next friend or guardian ad litem;

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[1] **ADVISORY COMMITTEE NOTE**: Since 1991, this rule has required that "Motions must set forth succinctly, but without argument, the specific grounds for the relief sought." This means that a motion, itself, must include a summary or outline of the factual and legal bases for the motion.

Because litigants frequently have not adhered to this requirement, this rule was amended in 1993 and, subsequently, 1997 to include sanctions for failure to follow the rule. If a motion does not include a succinct statement of grounds or otherwise does not comply with the rule, the court may (i) return a motion to counsel for resubmission in accordance with the rule; (ii) deny the motion; or (iii) impose other appropriate sanctions. As noted by the 1997 amendment, it is not sufficient merely to refer to a rule of civil procedure or to refer to a memorandum or other papers filed in support of the motion.

(D) to substitute parties;

(E) for referral to or withdrawal from the court's ADR program;

(F) for settlement conferences; and

(G) for approval of stipulations between the parties

(2) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations to case or other authority.

(3) Length of Memoranda; Filing Times. Memoranda supporting or opposing all motions, ~~including those under Fed. R. Civ. P. 12(b), except those for or treated as for summary judgment,~~, except (i) motions to dismiss or motions for summary judgment as provided in DUCivR 56-1, and (ii) motions pursuant to Fed.R.Civ.P. 65, must not exceed ~~ten (10)~~ fifteen (15) pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A memorandum opposing a motion must be filed within fifteen (15) days after service of the motion or within such extended time as allowed by the court. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion and must not exceed ~~ten (10)~~ fifteen (15) pages. No additional memoranda will be considered without leave of court. Attorneys may stipulate to shorter briefing periods and fewer memorandum pages, and the court encourages them to do so.

(4) Exceptions. Memoranda supporting or opposing motions to dismiss or motions pursuant to Rule 65 of the Federal Rules of Civil Procedure shall not exceed twenty-five (25) pages, exclusive of face sheet, table of contents, statements of issues and facts and exhibits and be filed and served pursuant to the provisions of DUCivR 56-1(b). Memoranda supporting or opposing summary judgment motions are governed by DUCivR 56-1.

~~(4)~~(5) Citations of Supplemental Authority. When pertinent and

significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a ~~letter~~ notice with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the ~~letter~~ notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(c) **Supporting Exhibits to Memoranda.** If any memorandum in support of or opposition to a motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.

(d) **Failure to Respond.** Failure to respond timely to a motion may result in the court's granting the motion without further notice.

(e) **Leave of Court and Format for Lengthy Memoranda.** If a memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved. A lengthy memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Memoranda exceeding page limitations, for which leave of court has been obtained, must contain under appropriate headings and in the order here indicated:

(1) a table of contents, with page references, listing the titles or headings of each section and subsection;

(2) a statement of the issues related to the precise relief sought;

(3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;

(4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented and the reasons for them, with citations to the authorities, statutes, and parts of the record relied on; and

(5) a short conclusion stating the precise relief sought.

(f) **Oral Arguments on Motions.** The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

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DUCivR 7-2 USE OF UNPUBLISHED DECISIONS AS AUTHORITY

(a) **Citations of Unpublished Decisions**. Citation of unpublished opinions is disfavored because the court typically attaches less significance to them than to published opinions. However, iIf an unpublished decision is cited, a copy of that decision must be attached to the memorandum or paper in which it is cited and served on all parties. A file of the unpublished decisions of this court, organized by district judge and indexed chronologically, is maintained by the U.S. Courts Law Library and is available to the bar and public during library hours as set forth in DUCivR 77-1(c).

(b) **Definition of Unpublished Decision**. For purposes of this rule, a decision is considered unpublished if it is not published in an official reporter of the issuing court or if it has been designated not for official publication.

(c) **Form of Citation.** Unpublished decisions of judges of the United States district courts should be cited as follows: Smith v. Jones, No. 2:87CV2302 (DU, March 1, 1989). Unpublished decisions of the United States Courts of Appeals should be cited in the following form: Smith v. Jones, No. 4101 (CA-10/DKS, March 1, 1989).

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DUCivR 7-3 CONSTRAINTS ON DISCLOSING PERSONAL DATA IN CIVIL FILINGS

(a) **Responsibility of Counsel for Redaction of Personal Identifiers.** Unless otherwise provided by court order, counsel and parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings, documents, and exhibits filed with the court either in paper or electronic format:

(1) Social Security numbers. If a document requires reference to a Social Security number, only the last four digits of that number shall be included.
(2) Names of Minor Children. If a document requires reference to a minor child, only the initials of the child's name shall be included.
(3) Dates of Birth. If a document requires reference to any dates of birth, only the year shall be included.
(4) Financial Account Numbers. If a document requires reference to financial account numbers, only the last four digits of those numbers shall be included.
(5) Home Addresses. If a document requires reference to a home address, only the city and state shall be included.

Responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review any document submitted for filing to determine whether it complies with this rule.

(b) **Submission of Unredacted Filings Under Seal.** Where a party deems it necessary to file a pleading, document, or exhibit with unredacted personal data identifiers, the party may do so under seal pursuant to and in compliance with DUCivR 5-3(g) of these rules. The court, may, however, still require the party to file a redacted copy for the public file.

(c) **Exercising Caution With Filings Containing Personal Information.** Parties are strongly encouraged to exercise caution and to inform themselves of any applicable legal prohibitions when filing any documents that contain personal information, including the following:

(1) any personal identifying number, such as driver's license number;

(2) medical records, treatment and diagnosis;
(3) employment history;
(4) individual financial information;
(5) proprietary or trade secret information;
(6) information regarding an individual's cooperation with the government;
(7) information regarding the victim of any criminal activity;
(8) national security information; and
(9) sensitive security information as described in 49 U.S.C. § 114(s).

If any party or attorney deems it necessary to include such personal information in a document intended for filing with the clerk, they shall carefully consider filing a motion to seal such document pursuant to DUCivR 5-3(g).

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DUCivR 9-1 ALLOCATION OF FAULT

(a) **Allocating Party Filing Requirements**. Any party that seeks to allocate fault to a nonparty pursuant to Title 78 UCA Chapter 27, shall file:

(a) A description of the factual and legal basis on which fault can be allocated; and

(b) Information known or reasonably available to the party that identifies the non-party, including name and city and state of residence and employment. If the identity of the nonparty is unknown, the party shall so state in its filing.

(b) **Allocating Party Time Requirements.** The information specified in subsection (a) must be included in the party's responsive pleading if known to the party. Alternatively, it must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated, but not later than any deadline specified in the scheduling order. Upon motion and for good cause shown, the court may permit the party to file the information specified in subsection (a) after the expiration of any deadlines provided for in this rule, but in no event later than ninety (90) days before the scheduled trial date.

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DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) **Form of Pleadings and Other Papers.** Except as otherwise permitted by the court or a magistrate judge for institutionalized persons, the original of all pleadings, motions, and other papers presented for filing in person or by mail must be on 8 ½ x 11 inch white paper of good quality, with a top margin of not less than 1½ inch, all other margins of not less than 1 inch, and impression only on one side of the paper. Such originals must be ~~two-hole drilled at the top of each page, must be~~ flat, ~~and~~ unfolded, and ~~must be~~ plainly typewritten or printed. Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for filing with the court. Originals and copies must be double-spaced except for quoted material and footnotes. Exhibits attached to the original of any pleading, motion or paper shall not be separately tabbed with dividers but an 8 ½ x 11 inch insert sheet shall be inserted to separate and identify each exhibit. Judges' copies of pleadings and exhibits may include tabbed dividers for the convenience of chambers. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting and Utah State Bar Number[3]
Attorney For
Address
Telephone

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, _____ DIVISION

Name of Case **Case No.**
Title of Document
Magistrate Judge's Name
(When Applicable)

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[3] Attorneys admitted to practice pro hac vice are not required to include a bar number.

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents, not attached to or included in motions or pleadings. ~~The address of a party must be included on the first document filed by an attorney on behalf of that party.~~ All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

Central Division Civil Cases	**2:~~97~~06CV0001PC**
Northern Division Civil Cases	**1:~~97~~06CV0001PC**
Central Division Criminal Cases	**2:~~97~~06CR0001PC**
Northern Division Criminal Cases	**1:~~97~~06CR0001PC**

Legend:

2	**=**	**Central Division**
1	**=**	**Northern Division**
~~97~~06	**=**	**Calendar Year**
CV	**=**	**Civil Case**
CR	**=**	**Criminal Case**
0000	**=**	**Consecutive Case Number**
PC	**=**	**Assigned Judge**

The title of each document must indicate its nature and on whose behalf it is filed. Where jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" must be typed in capital letters on the first page immediately below the title of the pleading. Where a matter has been referred to a magistrate judge, the caption for all motions, pleadings, and related documents in the matter must include the name of the magistrate judge below the title of the document.

(b) **Examination by the Clerk.** The clerk of court will examine all pleadings and other papers filed and may require counsel to properly revise or provide required copies of pleadings or other documents not conforming to the requirements set forth in these rules.

DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) **Form of Pleadings and Other Papers.** Except as otherwise permitted by the court or a magistrate judge for institutionalized persons, the original of all pleadings, motions, and other papers presented for filing in person or by mail must be on 8 ½ x 11 inch white paper of good quality, with a top margin of not less than 1½ inch, all other margins of not less than 1 inch, and impression only on one side of the paper. Such originals must be flat, unfolded, and plainly typewritten or printed. Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for filing with the court. Originals and copies must be double-spaced except for quoted material and footnotes. Exhibits attached to the original of any pleading, motion or paper shall not be separately tabbed with dividers but an 8 ½ x 11 inch insert sheet shall be inserted to separate and identify each exhibit. Judges' copies of pleadings and exhibits may include tabbed dividers for the convenience of chambers. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting and Utah State Bar Number[4]
Attorney For
Address
Telephone

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, _____ DIVISION

Name of Case **Case No.**
Title of Document
Magistrate Judge's Name
(When Applicable)

---

[4] Attorneys admitted to practice pro hac vice are not required to include a bar number.

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents, not attached to or included in motions or pleadings.

All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

Central Division Civil Cases	**2:06CV0001PC**
Northern Division Civil Cases	**1:06CV0001PC**
Central Division Criminal Cases	**2:06CR0001PC**
Northern Division Criminal Cases	**1:06CR0001PC**

Legend:

2	**=**	**Central Division**
1	**=**	**Northern Division**
06	**=**	**Calendar Year**
CV	**=**	**Civil Case**
CR	**=**	**Criminal Case**
0000	**=**	**Consecutive Case Number**
PC	**=**	**Assigned Judge**

The title of each document must indicate its nature and on whose behalf it is filed. Where jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" must be typed in capital letters on the first page immediately below the title of the pleading. Where a matter has been referred to a magistrate judge, the caption for all motions, pleadings, and related documents in the matter must include the name of the magistrate judge below the title of the document.

(b) **Examination by the Clerk.** The clerk of court will examine all pleadings and other papers filed and may require counsel to properly revise or provide required copies of pleadings or other documents not conforming to the requirements set forth in these rules.

DUCivR 16-1 PRETRIAL PROCEDURE

(a) Pretrial Scheduling and Discovery Conferences.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order. When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR program, and (iv) the discovery cutoff date.[5] If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

(A) Unless otherwise ordered by the court, ~~T~~the following categories of cases are exempt from these scheduling conference and scheduling order requirements:

(i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;

(ii) Cases filed by parties appearing *pro se* or in which all defendants are *pro se*;

(iii) Bankruptcy appeals and withdrawals;

(iv) Forfeiture and statutory penalty actions;

(v) Internal Revenue Service third-party and collection actions;

(vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;

(vii) Actions to enforce or quash administrative subpoenas;

(viii) Cases subject to multidistrict litigation;

(ix) Actions to compel arbitration or set aside arbitration awards;

(x) Proceedings to compel testimony or production of documents in actions pending in another district or to perpetuate testimony for use in any court; and,

[5] Annexed to these rules as Appendix III is the general form for reporting to the court the outcome of the attorneys' planning meeting.

(xi) Cases assigned to be heard by a three-judge panel.

(B) Unless otherwise ordered by the court, as a matter of general court policy, incarcerated or otherwise detained *pro se* parties will not be required to comply with Fed. R. Civ. P. 26 (f).

(b) **Magistrate Judge.** The court may designate a magistrate judge to hold the initial scheduling or any pretrial conference. The court generally will conduct the final pretrial conference in all contested civil cases.

(c) **Attorneys' Conference.** At a time to be fixed during the scheduling conference, but at least ten (10) days prior to the final pretrial conference, counsel for the parties will hold an attorneys' conference to discuss settlement, a proposed pretrial order, exhibit list and other matters that will aid in an expeditious and productive final pretrial conference.

(d) **Final Pretrial Conference.** Trial counsel must attend the final pretrial conference with the court. Preparation for this final pretrial conference should proceed pursuant to Fed. R. Civ. P. 16 and should include (i) preparation by plaintiff's counsel of a recommended pretrial order that is submitted to other counsel at least five (5) days prior to the final pretrial date, and (ii) preparation for resolution of unresolved issues in the case.

(e) **Pretrial Order.** At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is reproduced as Appendix IV to these rules. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-1 PRETRIAL PROCEDURE

(a) Pretrial Scheduling and Discovery Conferences.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order. When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR program, and (iv) the discovery cutoff date.[6] If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

(A) Unless otherwise ordered by the court, the following categories of cases are exempt from these scheduling conference and scheduling order requirements:

(i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;

(ii) Cases filed by parties appearing *pro se* or in which all defendants are *pro se*;

(iii) Bankruptcy appeals and withdrawals;

(iv) Forfeiture and statutory penalty actions;

(v) Internal Revenue Service third-party and collection actions;

(vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;

(vii) Actions to enforce or quash administrative subpoenas;

(viii) Cases subject to multidistrict litigation;

(ix) Actions to compel arbitration or set aside arbitration awards;

(x) Proceedings to compel testimony or production of documents in actions pending in another district or to perpetuate testimony for use in any court; and,

[6] Annexed to these rules as Appendix III is the general form for reporting to the court the outcome of the attorneys' planning meeting.

(xi) Cases assigned to be heard by a three-judge panel.

(B) Unless otherwise ordered by the court, as a matter of general court policy, incarcerated or otherwise detained *pro se* parties will not be required to comply with Fed. R. Civ. P. 26 (f).

(b) **Magistrate Judge.** The court may designate a magistrate judge to hold the initial scheduling or any pretrial conference. The court generally will conduct the final pretrial conference in all contested civil cases.

(c) **Attorneys' Conference.** At a time to be fixed during the scheduling conference, but at least ten (10) days prior to the final pretrial conference, counsel for the parties will hold an attorneys' conference to discuss settlement, a proposed pretrial order, exhibit list and other matters that will aid in an expeditious and productive final pretrial conference.

(d) **Final Pretrial Conference.** Trial counsel must attend the final pretrial conference with the court. Preparation for this final pretrial conference should proceed pursuant to Fed. R. Civ. P. 16 and should include (i) preparation by plaintiff's counsel of a recommended pretrial order that is submitted to other counsel at least five (5) days prior to the final pretrial date, and (ii) preparation for resolution of unresolved issues in the case.

(e) **Pretrial Order.** At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is reproduced as Appendix IV to these rules. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

(a) **Authority.** Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established ~~an experimental~~ court-annexed alternative dispute resolution (ADR) program for the District of Utah.

(b) **Procedures Available.** The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.

(c) **Cases Excluded from ADR Program.**

(1) Prisoner is a Party. Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party will not be subject to this rule.

(2) Excluded from Referral to Arbitration. Pursuant to the 1998 Alternative Dispute Resolution Act, the following types of cases may be referred to mediation but are excluded from referral to arbitration in the Court's ADR program ~~Parties to cases that originate as bankruptcy adversary proceedings, as appeals from the bankruptcy court, or as reviews of judgments of administrative law forums or other official adjudicated proceedings may elect to have their disputes mediated but not arbitrated~~.

(A) The action originates as a bankruptcy adversary proceeding, as an appeal from the bankruptcy court, or as a review of judgment of administrative law forums or other official adjudicated proceeding;

(B) The action is based on an alleged violation of a right secured by the Constitution of the United States; or

(C) Jurisdiction is based in whole or in part on section 28 USCA § 1343.

(d) **Certificate of ADR Election**. Except as excluded by section (c) of this rule, all counsel in civil actions ~~must~~ should ~~certify to the court that they have~~ discuss~~ed~~ the court's ADR program with their clients. ~~and must indicate whether the party elects to have the action referred in the program. This ADR Certification must be submitted in conjunction with the attorney report filed pursuant to Fed. R. Civ. P. 26.~~ The clerk will automatically issue to counsel a Notice of ADR which advises that any party at any time may contact the ADR program administrator in the office of the clerk to discuss, or to request that the matter be referred to, the ADR program. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties ~~in attendance~~ whether to ~~have the case~~ order referral of the matter ~~referred~~ to the program.

(e) **Case Referral Procedure.** Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. ~~Such~~ Rreferrals to mediation may be made after consultation with the parties at the initial scheduling conference, upon the motion of one or more parties, or upon the court's own motion. Referrals to arbitration may be made after consultation with the parties at the initial scheduling conference or upon the motion of one or more parties and the consent of all parties. The order will designate whether the case is referred to mediation or arbitration.

(f) **Stay of Discovery.** Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a civil action to the court's ADR Program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR Program.

(g) **ADR Case Administration**. The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan~~, a copy of~~ which is appended to these rules.

(h) **Supervisory Power of the Court.** Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C.,

the Federal Rules of Civil Procedure, and these rules.

(i) **Compliance Judge.** The court will designate a district or magistrate judge to serve as the ADR compliance judge (ADR judge) to hear and determine complaints alleging violations of provisions of this rule or the ADR Plan. When necessary, the chief judge may designate an alternative district or magistrate judge to temporarily perform the duties of the ADR judge.

(j) **Violations of the Rules Governing the ADR Program.**

(1) Complaints. A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s), has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing under oath. Complaints submitted by any judge of this court need not be made under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.

(2) Confidentiality. Absent a waiver of confidentiality by all necessary persons, or an order of the Court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.

Alternative Dispute Resolution
Plan
United States District Court
For the District of Utah

SECTION 1: GENERAL ADMINISTRATIVE PROVISIONS

(a) **Opting Out of the ADR Program; Written Notice.** By written notice filed with the clerk of court and served upon all parties pursuant to Fed. R. Civ. P. 5 no later than twenty (20) days following entry of an order of referral, any party to a civil action which has been referred to the ADR Program may opt out of participation in the program.

(1) Where all plaintiffs or all defendants opt out of participation in the program, the case will be withdrawn from the program.

(2) Where, twenty (20) days following the entry of an order of referral, there remain at least one plaintiff and one defendant who have elected to remain in the ADR program, the case will proceed in the program as to those participating parties.

(b) **Withdrawal of Referral by the Court.** On its own motion, or for good cause shown upon motion by a party, the court may order that a civil action that has been referred to the court's ADR program be withdrawn from that program.

(c) **Withdrawal of Action from ADR Program.** On withdrawal of an action from the ADR program, the formal stay of discovery will be lifted and the case will continue on the pretrial schedule previously set by the district or magistrate judge. Where no pretrial scheduling order has been set, the court or magistrate judge will enter an appropriate scheduling order pursuant to DUCivR 16-1(a)(1).

(d) **Settlement of a Case Referred to ADR Program.** If the parties independently settle a civil action that has been referred to the court's ADR program, the parties or their counsel must promptly (i) advise the clerk of court ~~ADR roster member(s) assigned to that case of the settlement~~, and (ii) file with the clerk of

court a stipulation and proposed order for dismissal of the civil action.

(e) **Orientation.** Except as excluded by DUCivR 16-2, any party to a civil action pending before this court or any attorney may make arrangements with the clerk of the court to participate in a brief ADR orientation.

SECTION 2: COURT-APPOINTED ADR ROSTER

The court will establish and maintain an ADR roster. ADR roster members will be appointed by the court from applications submitted by or on behalf of persons who are qualified, as set forth below, and willing to serve on the ADR roster. Each roster member will be designated for service as a court-appointed arbitrator or court-appointed mediator; some members, based on their training and experience, may be designated as both. The court may vary the size of the roster according to its discretion and the number of cases that are referred to the ADR program to ensure that roster members are provided sufficient opportunity to maintain their skills. Members of the bar of this court and parties to a civil action subject to DUCivR 16-2(c) may review the roster upon request.

(a) **Qualifications and Appointment.** To be eligible for appointment to the ADR roster, an attorney must (i) have been admitted to law practice not fewer than ten (10) years; (ii) be an active member in good standing of the bar of this court; and (iii) either have completed or agree to complete a court-approved ADR training program or demonstrate equivalent training or ability through relevant experience in professional practice.

(b) **ADR Members Pro Tem.** On the request of the participating parties, or on its own motion, the court may appoint persons having specialized knowledge, skill, education, training, or experience in relevant subject matter, who need not be admitted to the practice of law or members of the bar of this court, to serve as ADR members pro tem for the civil action in which their participation is requested. Each member pro tem's appointment expires upon the completion of ADR proceedings in the civil action for purposes of which the member pro tem was appointed. ADR members pro tem are subject to the same rules and guidelines that govern ADR roster members.

(c) **ADR Member Disclosure Requirements.** When appointed by the court to

serve as an arbitrator or mediator in a particular case, ADR roster members and members pro tem should carefully review the complaint and answer provided by the clerk to determine whether they have any conflict of interest as set forth in Canon III of the court's ADR Code of Ethics. Where any member determines that such a conflict exists, the member should withdraw from participation in the case. Where a ~~panel~~ members determines that no such conflict exists, but that the member has an interest or relationship that may be perceived as a conflict, the member must promptly disclose to the parties the nature of that interest or relationship. This duty of prompt disclosure is ongoing during the ADR proceedings.

(d) **ADR Member Oath.** Each ADR roster member and member pro tem appointed to a case referred to the ADR Program must execute, upon acceptance of such case, the following oath:
"I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a court-appointed (arbitrator or mediator) under the Constitution and laws of the United States."

(e) **Disqualification of ADR Member.**

(1) Applicable Statute and ADR Code of Ethics. No ADR roster member or member pro tem may render services in the ADR Program or participate in any court-annexed ADR proceedings with respect to a civil action under any circumstances that would justify judicial disqualification pursuant to 28 U.S.C. § 455(b) or which would justify disqualification under the court's ADR Code of Ethics.

(2) Inquiry by the Clerk of Court. The clerk will make appropriate inquiry concerning the existence of any circumstances which may warrant the disqualification of any roster member or member pro tem pursuant to Section 2(e)(1) of this plan.

(f) **Withdrawal of ADR Member from a Case or Proceeding.** Where a roster member or member pro tem thus selected is subject to disqualification pursuant to Section 2(e) of this plan or requests to withdraw for good reason from participation in the particular case to which that member was appointed by the

court, the clerk of court will select another available ADR roster member to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in Section 4(b)(3) of this plan.

(g) **Withdrawal from ADR Roster.** Any ADR roster member may request at any time to be removed from the court's ADR roster on either a temporary or permanent basis.

(h) **Compensation of ADR Members.** ADR roster members and members pro tem ~~may be paid by the court for their services in the ADR program at a standard rate per case. The standard rate(s) of compensation for services rendered in the ADR program will be fixed subject to the limits set by the Judicial Conference of the United States. Unless otherwise ordered by the court, compensation will be paid upon the member's completion of participation in ADR proceedings in each case. A member entitled to compensation should submit a voucher using a form provided by the clerk.~~ will be compensated by the parties at an hourly rate set by the court. Court-appointed arbitrators will be compensated for reasonable preparation time and for time spent conducting an arbitration conference or hearing. Court-appointed mediators will be compensated for time spent conducting a mediation conference unless ordered otherwise by the court. Where compensation is warranted in preparation for complex or otherwise demanding mediation sessions, mediators should notify clerk of court and the parties of the anticipated costs in writing in advance of the session either in a fee agreement or the Agreement to Mediate. Compensation fees will be divided evenly between the parties unless otherwise negotiated or ordered by the court. ADR members must not accept any compensation, gift, or other service or item of value not specifically authorized by this subsection from any party, party's attorney, or other person involved in disputes whose resolution they have been assigned to supervise~~d~~.

(1) Indigent Parties. Any party unable to pay its portion of the fee may file a motion with the court for relief. The motion shall be filed prior to the ADR conference and be accompanied by an affidavit of financial standing. If the court grants the motion, the other parties remain responsible for their portion of the fee. If the court waives the compensation fee for all parties in the case, the ADR member shall serve pro bono.

(2) Payment. All terms and conditions of payment must be clearly communicated by the ADR member in writing, either via a fee agreement or in the Agreement to Mediate, to the parties. The parties shall pay their ADR member directly.

(i) Reimbursement of Expenses. Upon completion of the ADR proceedings, an ADR roster member or member pro tem may obtain reimbursement for out-of-pocket expenses authorized under applicable federal regulations. A member seeking reimbursement should submit a voucher for those expenses using a form prescribed by the clerk.

(j) Immunity. All ADR roster and pro tem members who serve in the court's ADR Program perform quasi-judicial functions. When acting in their capacity as court-appointed neutrals, the immunities and protections that the law accords to persons serving in such capacity extend to them.

SECTION 3: CONFIDENTIALITY

(a) Confidentiality in ADR Proceedings. The court intends through implementation of this ADR program that ADR proceedings offer an alternative to the formal litigation process. To that extent, ADR proceedings must be conducted in a manner that encourages an informal and confidential exchange among counsel, the parties, and the ADR roster member(s) to facilitate resolution of disputes. ADR proceedings will be conducted in private, similar to confidential settlement conferences, whose general purposes they share, as set forth in DUCivR 16-3. Where counsel jointly move that the proceedings for a particular case be opened, the supervising ADR roster member must direct that they be opened.

(b) Confidentiality in ADR Communications. Motions, memoranda, exhibits, affidavits, and other oral or written communication submitted by counsel or the parties to the ADR panel member(s) pursuant to the requirements of this plan and at the direction, if any, of the ADR panel member(s), must not be made a part of the record or filed with the clerk of court. Such communication must not be transmitted to the district or magistrate judge to whom the case is assigned except as required elsewhere in this plan. The clerk will file and

include in the court's record only the order referring a case to ADR and other ADR scheduling and proceeding notices.

(c) **ADR Member Confidentiality.** Members of the court's ADR roster and members pro tem must preserve and maintain the confidentiality of all ADR proceedings in which they officiate. They must not disclose to or discuss with anyone, including the designated judge, any information related to the proceedings unless specifically required elsewhere in this plan. ADR members must secure and ensure the confidentiality of ADR proceeding records; at the conclusion of the proceedings, the ADR member shall either return all materials submitted by the parties to the respective parties or ~~and must return them to the submitting parties or~~ destroy them~~, as appropriate, at the conclusion of the proceeding~~. ADR roster members designated to serve as mediators must keep confidential from other parties any information obtained in individual caucuses ~~unless~~ that the party to the caucus ~~specifically authorizes disclosure~~ expressly identifies as confidential.

SECTION 4: SELECTION OF ADR MEMBERS

(a) **Stipulation by the Parties.** The participating parties may select by stipulation ADR roster members for the purpose of conducting alternative dispute resolution proceedings in their ~~at~~ action. The parties must notify the clerk of such stipulation within fifteen (15) days of referral of the action into the ADR program. Pursuant to Section 2(b) of this plan, any party may request in writing the appointment of one member pro tem, unless, in an action referred to arbitration, the parties have agreed to use a panel of three (3) arbitrators instead of one (1). In such actions, the parties may request in writing the appointment of up to two (2) members pro tem. Such requests must be served on all other parties. Where all other parties to the matter stipulate to the appointment of the member(s) pro tem, the clerk will forward such requests for appointment of ADR member(s) pro tem to the assigned judge for review and approval.

(b) **Selection by Clerk.** The clerk of court or his designee will appoint an ADR roster member to serve as the neutral if the parties fail to jointly select an ADR roster or member pro tem to serve as the neutral and notify the clerk of their choice within fifteen (15) days of the referral to the ADR program.

Alternative Selection Procedure.

(1) Where the parties are unable to agree upon the selection of the ADR roster member(s) or member(s) pro tem for a particular case, the clerk will prepare a list of twelve (12) available roster members, including the names of members pro tem, if any, requested by the parties, and mail the list to each participating party.

(2) Within ten (10) days from the date of mailing, each party must return the list to the clerk of the court marked as follows:

(A) each party may strike two (2) names from that party's copy of the list up to a maximum of four (4) per side;

(B) each party must mark the remaining names on the list in numerical order of preference; and

(C) each party must separately mark the name(s) of any roster member(s) or member(s) pro tem who the party knows or believes in good faith may be subject to disqualification pursuant to Section 2(e) of this plan.

(3) Upon receipt of the list(s) returned by the parties, the clerk will select ADR roster member(s) or member(s) pro tem for the case consistent with the stated preferences of the parties and, where required, the approval of the court. Alternatively, if the parties (i) do not return their lists within ten (10) days or, (ii) express no preferences, the clerk will make the selection from the ADR roster consistent with the clerk's discretion. When selection is completed, the clerk will mail to each participating party a notice listing the roster member(s) or member(s) pro tem thus selected.

SECTION 5: ARBITRATION PROCEEDINGS

A civil action in which, by stipulation or order, arbitration has been designated, will proceed as follows:

(a) **Selection of Panel or Arbitrator.** One (1) ADR member, or member pro tem as authorized by the court, will be selected to conduct the proceeding, unless the participating parties stipulate that the proceeding be conducted by three (3)

arbitrators.[7] The ADR roster member(s) or member(s) pro tem must be selected as provided in Section 4 of this plan. If a panel of three (3) arbitrators is selected, the members of a panel will designate a chair who must be a member of the court's ADR roster. Members pro tem may not serve as arbitration panel chairs.

(b) **Majority Rule.** If a panel of three (3) arbitrators is selected, the concurrence of a majority of the panel is required for any decision, ruling, order, or award by the panel.

(c) **Pre-hearing Conference.**

(1) Scheduling, Purposes, and Participants. Within thirty (30) days after selection of the arbitrator and upon ten (10) days' notice mailed by the clerk to all participating parties, the arbitrator will conduct a pre-hearing conference for the purposes of (i) reviewing the case, (ii) assisting the parties in defining and narrowing the issues, (iii) determining the scope and timing of any discovery, (iv) scheduling the arbitration hearing, and (v) executing an arbitration agreement. All parties or their counsel must attend this conference. The arbitration hearing must be held within one-hundred-twenty (120) days of the date of the pre-hearing conference.

(2) Written and Oral Testimony. Where appropriate in the course of the pre-hearing conference, the arbitrator will (i) encourage the use of stipulations, affidavits, proffers of testimony, written submission of expert opinions, and other time-saving evidentiary tools and procedures, and (ii) instruct the parties to limit live testimony, if any, to the resolution of factual disputes and witness credibility issues. The arbitrator also will instruct the parties that, unless otherwise authorized by the arbitrator or agreed upon by the parties, issues other than those defined in the pre-hearing conference should not be raised at the arbitration hearing and will not be considered in determining any arbitration award.

(3) Location. Unless otherwise agreed by the participating parties and

[7] In cases in which the parties have stipulated that the proceedings be conducted by three (3) arbitrators, references in this rule to the "arbitrator" should be read as referring to the "arbitration panel."

approved by the arbitrator, the arbitration hearing should be held at the Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah.

(4) Arbitration Agreement. During the pre-hearing conference, the parties will execute an arbitration agreement that should conform to this plan and the approved form of arbitration agreement which is available from the clerk of court. Following its execution, the arbitrator or panel chair will notify the clerk of court of the scheduled hearing date. The clerk will mail a hearing notice to each participating party. Under subsection Section 5(p) of this plan, the parties may provide in the final arbitration agreement that the arbitration award be final and binding.

(5) Additional Pre-Hearing Conferences. The arbitrator may schedule additional pre-hearing conferences to facilitate preparation of the arbitration agreement.

(d) Interim Procedural Orders; Rescheduling. The arbitrator has the authority to make such interim procedural orders in furtherance of the purposes of the arbitration proceeding and this plan as are deemed necessary and appropriate (*e.g.*, requiring exchange of witness and exhibit lists, designation of experts, etc.). Upon motion by any party or the arbitrator's own motion, the arbitrator may reschedule the arbitration hearing, provided the hearing is commenced within thirty (30) days of the original date set at the pre-hearing conference. Except as to matters of pre-hearing scheduling, or continuance of the arbitration hearing, no party or counsel for a party may have ex parte contact or communication concerning the case with any ADR roster member(s).

(e) Exhibits; Objections; Waiver. Not fewer than twenty (20) days before the arbitration hearing, a party that intends to offer documentary evidence at the arbitration hearing must serve copies of the exhibits, together with written notice of that party's intention to offer the same, on all participating parties. Not fewer than seven (7) days before the arbitration hearing, each party may serve on the offering party written objection(s) to one or more of the exhibits, specifying the exhibit and the specific ground(s) of objection. Any objections to any exhibit served in accordance with this section based upon any issue of evidentiary foundation, authentication, or hearsay not served as provided in this plan will be deemed to be waived. Each party must mark all original exhibits

and copies prior to the arbitration hearing under DUCivR 83-5.

(f) **Subpoenas.** The presence of witnesses and production of documentary or other evidence at the arbitration hearing may be compelled by subpoena under Fed. R. Civ. P. 45.

(g) **Transcript or Recording.** Any participating party, at that party's own expense and on five (5) days' notice to the arbitrator and participating parties, may make arrangements for stenographic or other recording of the arbitration hearing and a transcript of the proceedings, provided that a copy of the transcript or recording is supplied to the arbitrator at no charge. Video recording will not be permitted. Copies of the transcript or recording must be made available to all participating parties on request and at a reasonable expense.

(h) **Arbitration Hearing.** The arbitration hearing will be commenced at the place, date, and time designated by the arbitrator and will be conducted by the arbitrator. If a panel of three (3) arbitrators is selected, the chair will preside. Each participating party and its counsel should attend the arbitration hearing. The arbitration hearing may proceed in the absence of any party who, after written notice of the scheduling of the hearing, does not appear. At the request of any participating party or the arbitrator, non-party witnesses, except when testifying, will be excluded from the arbitration hearing under Fed. R. Evid. 615. The arbitrator will determine the mode and order of presentation of issues, argument, the testimony of witnesses, and other evidence, limiting the amount of time to which each party is entitled. Except as otherwise set forth in the arbitration agreement, the burden of proof among the parties will be allocated, and presumptions, if any, will apply as if at trial before the court.

(i) **Issues to be Decided.** Absent a stipulation by all parties, the arbitrator will make no determination regarding issues not covered in the arbitration agreement. Where the arbitrator determines that such other issues must be determined in order to render an award, the arbitrator will seek the parties' agreement to do so.

(j) **Evidence; Admissibility; Rules of Evidence.** All oral testimony at the arbitration hearing must be taken under oath or affirmation under Fed. R. Evid. 603 and will be subject to Fed. R. Evid. 501 concerning privileges. The

arbitrator will determine the admissibility of evidence offered at the arbitration hearing. The arbitration hearing should be conducted in conformity with the Federal Rules of Evidence, but the arbitrator may receive evidence otherwise inadmissible under those rules if (i) the arbitrator finds the evidence to be relevant and trustworthy; and (ii) the receipt of that evidence is not unfairly prejudicial to any party against whom it is offered. The arbitrator may take judicial notice of adjudicative facts consistent with Fed. R. Evid. 201.

(k) **Arbitration Award.** The arbitrator will prepare and file with the clerk any award in an arbitration proceeding conducted pursuant to this plan within twenty (20) days of the conclusion of the arbitration hearing. The clerk will mail a copy of the award to all participating parties or their counsel and retain the original under court seal for thirty (30) days. At the conclusion of the thirty (30) days, the clerk will unseal the award and enter judgment under Section 5(m) of this plan. If, prior to expiration of the thirty (30) days, any party to the action files a demand for trial de novo under Section 5(n) of this plan, the clerk will dispose of the original award.

(l) **Form of the Award.** The award must be in writing, signed by the arbitrator, and must state with particularity (i) the name(s) of the prevailing party or parties and the party or parties against whom the award is rendered, and (ii) the precise amount(s) of the award. With respect to monetary relief, the arbitrator may, but is not required to, make findings of fact or otherwise explain the basis of the award. Where equitable or other non-monetary relief is sought, the award must state with particularity the nature and extent of such relief, if any, found to be an appropriate remedy and the factual and legal ground(s) for such relief.

(m) **Entry of Judgment on Award.** Unless a party has filed a demand for trial de novo under Section 5(n) of this plan within thirty (30) days after the filing of the award, the clerk of court will enter judgment on the award in the amount(s) specified in it under Fed. R. Civ. P. 58. If no timely demand for trial de novo has been made with respect to an award granting or denying equitable or other non-monetary relief, the court will enter an order approving the award, and the clerk will enter judgment accordingly.

(n) **Trial De Novo; Written Demand.** Any participating party may file and serve a written demand for trial de novo within thirty (30) days after the filing of the

arbitration award. Where timely demand has been made, the clerk will vacate the award and the case will be withdrawn from the ADR Program.

(o) **Admissibility in Other Proceedings.** No transcript, recording or other record of the arbitration hearing, final arbitration agreement, or award or recommendation filed in a proceeding governed by this plan, will be admissible as evidence for any purpose in a trial de novo or other adjudicative proceeding, unless (i) the evidence is independently admissible under the Federal Rules Evidence, or (ii) the parties otherwise stipulate.

(p) **Binding Arbitration Available.** At any time prior to the issuance of the arbitration award, the parties may agree, by written stipulation, that the award will be final and binding.

SECTION 6: MEDIATION PROCEEDINGS

A civil action in which, by stipulation or order, mediation has been designated as the method of alternative dispute resolution to be employed, will proceed as follows:

(a) **Selection of Mediator.** The participating parties may (i) select by stipulation a mediator from the roster maintained by the clerk of court, or (ii) request the appointment of a member pro tem as provided in Section 2(b) of this plan. In the event that the parties cannot agree, the mediator will be selected as provided in Section 4(b) of this plan.

(b) **Scheduling the Mediation Conference.** Within twenty (20) days following selection and after consultation with the participating parties or their counsel, the mediator will schedule the place, date, and time of the mediation conference, notice of which will be sent by the clerk of court to all participating parties. Unless otherwise agreed by the participating parties and approved by the mediator, the mediation conference will be held at the Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah. The mediator may reschedule the mediation conference at the request of one or more parties or on the mediator's own motion, provided the conference will commence within thirty (30) days of the original scheduled date.

(c) **Pre-conference Memoranda; Agenda.** Unless the parties otherwise agree, each participating party will provide to the mediator a concise memorandum describing that party's position concerning the issue(s) to be resolved through the mediation. This memorandum must be provided at least ten (10) days before the scheduled date of the mediation conference. The mediator may direct that the memoranda be exchanged between participating parties. The mediator may prepare and circulate an agenda for the mediation conference.

(d) **Mediation Conference.** The mediation conference will commence at the place, date, and time set forth in the notice. All participating parties and their counsel must be present and prepared to discuss all relevant issues in the case. The mediator will conduct the mediation conference, determine the length and timing of sessions and recesses, specify the order and manner in which issues and parties' positions are to be addressed, etc. The mediation conference should proceed in a fashion that promotes the goals of the mediation process, preserves confidentiality, and encourages candor. The mediator should serve as a neutral facilitator, assisting the parties in defining and narrowing the issues, and encouraging each party to examine the dispute from various perspectives, without undertaking to decide any issue, make findings of fact, or impose any agreement.

(e) **Separate Consultation with Parties During the Conference.** During the conference, the mediator may meet or consult separately with one or more participating parties, or may divide the conference into groups of fewer than all parties. Information disclosed to the mediator on a confidential basis during separate consultation must not be disclosed to other parties without the consulting party's consent.

(f) **Absent Parties.** On written recommendation by the mediator, or motion by a participating party, the court may order absent parties to show cause why they failed to attend the mediation conference and, if appropriate, why sanctions should not be imposed.

(g) **Termination of the Mediation Conference.** If the mediator determines that the conference is making no substantive progress towards settlement, the mediator may adjourn the mediation conference and report that adjournment in

writing to the clerk of court. By stipulation of at least two adverse participating parties, the mediator may schedule and conduct a second conference. Absent unusual circumstances, such second conferences should be conducted within thirty (30) days of the original mediation conference. If no such stipulation is made, or if no substantive progress is being made at the second conference, the mediator will terminate the mediation conference and report that termination in writing to the clerk of court. Upon receipt of such report, the case will be withdrawn from the ADR program.

(h) **Settlement.** In the event that a settlement as to all issues is reached during the mediation conference, the participating parties should prepare and execute a written settlement agreement and promptly file with the clerk of court a stipulation and order for dismissal of the civil action. In the event that a resolution of fewer than all the issues is reached, the parties should prepare and execute a stipulation concerning those issues which were resolved and identifying those issues which remain in dispute. On filing of the stipulation with the clerk, the case will be withdrawn from the ADR program.

(i) **Confidentiality; Non-admissibility of Proceedings.**

(1) Disclosure Constraints. All proceedings in any mediation conference conducted under this plan, including any ~~statement~~ communication made by any party, attorney, ~~or~~ representative, or any other person attending the mediation, are conclusively deemed to be made in compromised negotiations within the meaning of Fed. R. Evid. 408. ~~Such proceedings (i) must not be construed as an admission or be admissible as evidence for any purpose in any other proceeding, unless the evidence is independently admissible under the Federal Rules of Evidence or the parties otherwise stipulate and, (ii)~~ In addition, absent exception under paragraph (2) below, such communications shall not be:

(A) disclosed to anyone not involved in the litigation;

(B) disclosed to the assigned district or magistrate judge, or

(C) used for any purpose, including impeachment, in any pending or future proceedings in this Court.

(2) Limited Exceptions to Confidentiality. This subsection does not prohibit:

(A) disclosures as may be stipulated by all parties and the mediator;

(B) disclosures from mediation proceedings that were open to the public based on stipulation of all parties;

(C) a report to or an inquiry by the ADR judge or the clerk of court pursuant to DUCivR 16-2(j) regarding a possible violation of this rule or the court's ADR Plan;

(D) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program;

(E) sharing of mediation experience by mediators for training or education purposes, provided the identity of the persons and parties involved in the mediation remain confidential; or

(F) disclosures otherwise required by law.

(3) Prohibition on Reproduction or Dissemination of Proceedings. Mediation conferences may not be recorded, transcribed, or published in paper, electronic, digital, audio, or video format without the prior written consent of the parties and the mediator. ~~Video recordings of proceedings may not be made.~~

(j) Attendance at Mediation Conference Required: Counsel and all parties are required to attend the mediation conference(s) in person unless otherwise excused by the mediator upon showing of good cause.

(1) Corporation or Other Entity. If a party is not a natural person, a duly authorized representative or agent of the entity, in addition to outside counsel, must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below. The representative must have settlement authority and knowledge about the facts of the case.

(2) Government Entity. If a party is a unit or agency of government, a duly authorized representative or agent of the entity must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below. The government representative must have, to the greatest extend feasible, (i) authority to settle and knowledge about the facts of the case, (ii) the government entity's position, and (iii) the procedures and policies under which the governmental unit determines whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(3) Insurers. If an insurance carrier is directly or indirectly involved in the outcome of the case, a duly authorized representative of the carrier with knowledge about the facts of the case and settlement authority must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below.

(4) Request to be Excused. A party, representative, attorney, or insurance carrier may be excused by the mediator from attending the mediation conference(s) only after a showing that personal attendance would impose an extraordinary and unnecessary hardship. A person excused from appearing in person at a mediation conference must be available to participate by telephone and must notify in writing, at least forty-eight (48) hours in advance of the mediation conference, all parties in the case and the clerk of court about the appearance by telephone.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

(a) **Authority.** Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established a court-annexed alternative dispute resolution (ADR) program for the District of Utah.

(b) **Procedures Available.** The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.

(c) **Cases Excluded from ADR Program.**

(1) Prisoner is a Party. Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party will not be subject to this rule.

(2) Excluded from Referral to Arbitration. Pursuant to the 1998 Alternative Dispute Resolution Act, the following types of cases may be referred to mediation but are excluded from referral to arbitration in the Court's ADR program.

(A) The action originates as a bankruptcy adversary proceeding, as an appeal from the bankruptcy court, or as a review of judgment of administrative law forums or other official adjudicated proceeding;

(B) The action is based on an alleged violation of a right secured by the Constitution of the United States; or

(C) Jurisdiction is based in whole or in part on section 28 USCA § 1343.

(d) **Certificate of ADR Election**. Except as excluded by section (c) of this rule, all counsel in civil actions should discuss the court's ADR program with their clients. The clerk will automatically issue to counsel a Notice of ADR which advises that any party at any time may contact the ADR program administrator

in the office of the clerk to discuss, or to request that the matter be referred to, the ADR program. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties whether to order referral of the matter to the program.

(e) **Case Referral Procedure.** Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. Referrals to mediation may be made after consultation with the parties at the initial scheduling conference, upon the motion of one or more parties, or upon the court's own motion. Referrals to arbitration may be made after consultation with the parties at the initial scheduling conference or upon the motion of one or more parties and the consent of all parties. The order will designate whether the case is referred to mediation or arbitration.

(f) **Stay of Discovery.** Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a civil action to the court's ADR Program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR Program.

(g) **ADR Case Administration**. The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan which is appended to these rules.

(h) **Supervisory Power of the Court.** Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C., the Federal Rules of Civil Procedure, and these rules.

(i) **Compliance Judge.** The court will designate a district or magistrate judge to serve as the ADR compliance judge (ADR judge) to hear and determine complaints alleging violations of provisions of this rule or the ADR Plan. When necessary, the chief judge may designate an alternative district or magistrate judge to temporarily perform the duties of the ADR judge.

(j) Violations of the Rules Governing the ADR Program.

(1) Complaints. A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s), has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing under oath. Complaints submitted by any judge of this court need not be made under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.

(2) Confidentiality. Absent a waiver of confidentiality by all necessary persons, or an order of the Court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.

Alternative Dispute Resolution
Plan
United States District Court
For the District of Utah

SECTION 1: GENERAL ADMINISTRATIVE PROVISIONS

(a) **Opting Out of the ADR Program; Written Notice.** By written notice filed with the clerk of court and served upon all parties pursuant to Fed. R. Civ. P. 5 no later than twenty (20) days following entry of an order of referral, any party to a civil action which has been referred to the ADR Program may opt out of participation in the program.

(1) Where all plaintiffs or all defendants opt out of participation in the program, the case will be withdrawn from the program.

(2) Where, twenty (20) days following the entry of an order of referral, there remain at least one plaintiff and one defendant who have elected to remain in the ADR program, the case will proceed in the program as to those participating parties.

(b) **Withdrawal of Referral by the Court.** On its own motion, or for good cause shown upon motion by a party, the court may order that a civil action that has been referred to the court's ADR program be withdrawn from that program.

(c) **Withdrawal of Action from ADR Program.** On withdrawal of an action from the ADR program, the formal stay of discovery will be lifted and the case will continue on the pretrial schedule previously set by the district or magistrate judge. Where no pretrial scheduling order has been set, the court or magistrate judge will enter an appropriate scheduling order pursuant to DUCivR 16-1(a)(1).

(d) **Settlement of a Case Referred to ADR Program.** If the parties independently settle a civil action that has been referred to the court's ADR program, the parties or their counsel must promptly (i) advise the clerk of court, and (ii) file with the clerk of court a stipulation and proposed order for dismissal of the civil

action.

(e) **Orientation.** Except as excluded by DUCivR 16-2, any party to a civil action pending before this court or any attorney may make arrangements with the clerk of the court to participate in a brief ADR orientation.

SECTION 2: COURT-APPOINTED ADR ROSTER

The court will establish and maintain an ADR roster. ADR roster members will be appointed by the court from applications submitted by or on behalf of persons who are qualified, as set forth below, and willing to serve on the ADR roster. Each roster member will be designated for service as a court-appointed arbitrator or court-appointed mediator; some members, based on their training and experience, may be designated as both. The court may vary the size of the roster according to its discretion and the number of cases that are referred to the ADR program to ensure that roster members are provided sufficient opportunity to maintain their skills. Members of the bar of this court and parties to a civil action subject to DUCivR 16-2(c) may review the roster upon request.

(a) **Qualifications and Appointment.** To be eligible for appointment to the ADR roster, an attorney must (i) have been admitted to law practice not fewer than ten (10) years; (ii) be an active member in good standing of the bar of this court; and (iii) either have completed or agree to complete a court-approved ADR training program or demonstrate equivalent training or ability through relevant experience in professional practice.

(b) **ADR Members Pro Tem.** On the request of the participating parties, or on its own motion, the court may appoint persons having specialized knowledge, skill, education, training, or experience in relevant subject matter, who need not be admitted to the practice of law or members of the bar of this court, to serve as ADR members pro tem for the civil action in which their participation is requested. Each member pro tem's appointment expires upon the completion of ADR proceedings in the civil action for purposes of which the member pro tem was appointed. ADR members pro tem are subject to the same rules and guidelines that govern ADR roster members.

(c) **ADR Member Disclosure Requirements.** When appointed by the court to serve as an arbitrator or mediator in a particular case, ADR roster members and members pro tem should carefully review the complaint and answer provided by the clerk to determine whether they have any conflict of interest as set forth in Canon III of the court's ADR Code of Ethics. Where any member determines that such a conflict exists, the member should withdraw from participation in the case. Where a member determines that no such conflict exists, but that the member has an interest or relationship that may be perceived as a conflict, the member must promptly disclose to the parties the nature of that interest or relationship. This duty of prompt disclosure is ongoing during the ADR proceedings.

(d) **ADR Member Oath.** Each ADR roster member and member pro tem appointed to a case referred to the ADR Program must execute, upon acceptance of such case, the following oath:
"I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a court-appointed (arbitrator or mediator) under the Constitution and laws of the United States."

(e) **Disqualification of ADR Member.**

(1) Applicable Statute and ADR Code of Ethics. No ADR roster member or member pro tem may render services in the ADR Program or participate in any court-annexed ADR proceedings with respect to a civil action under any circumstances that would justify judicial disqualification pursuant to 28 U.S.C. § 455(b) or which would justify disqualification under the court's ADR Code of Ethics.

(2) Inquiry by the Clerk of Court. The clerk will make appropriate inquiry concerning the existence of any circumstances which may warrant the disqualification of any roster member or member pro tem pursuant to Section 2(e)(1) of this plan.

(f) **Withdrawal of ADR Member from a Case or Proceeding.** Where a roster member or member pro tem thus selected is subject to disqualification pursuant to Section 2(e) of this plan or requests to withdraw for good reason from

participation in the particular case to which that member was appointed by the court, the clerk of court will select another available ADR roster member to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in Section 4(b)(3) of this plan.

(g) **Withdrawal from ADR Roster.** Any ADR roster member may request at any time to be removed from the court's ADR roster on either a temporary or permanent basis.

(h) **Compensation of ADR Members.** ADR roster members and members pro tem will be compensated by the parties at an hourly rate set by the court. Court-appointed arbitrators will be compensated for reasonable preparation time and for time spent conducting an arbitration conference or hearing. Court-appointed mediators will be compensated for time spent conducting a mediation conference unless ordered otherwise by the court. Where compensation is warranted in preparation for complex or otherwise demanding mediation sessions, mediators should notify clerk of court and the parties of the anticipated costs in writing in advance of the session either in a fee agreement or the Agreement to Mediate. Compensation fees will be divided evenly between the parties unless otherwise negotiated or ordered by the court. ADR members must not accept any compensation, gift, or other service or item of value not specifically authorized by this subsection from any party, party's attorney, or other person involved in disputes whose resolution they have been assigned to supervised.

(1) Indigent Parties. Any party unable to pay its portion of the fee may file a motion with the court for relief. The motion shall be filed prior to the ADR conference and be accompanied by an affidavit of financial standing. If the court grants the motion, the other parties remain responsible for their portion of the fee. If the court waives the compensation fee for all parties in the case, the ADR member shall serve pro bono.

(2) Payment. All terms and conditions of payment must be clearly communicated by the ADR member in writing, either via a fee agreement or in the Agreement to Mediate, to the parties. The parties shall pay their ADR member directly.

(i) **Reimbursement of Expenses.** Upon completion of the ADR proceedings, an ADR roster member or member pro tem may obtain reimbursement for out-of-pocket expenses authorized under applicable federal regulations. A member seeking reimbursement should submit a voucher for those expenses using a form prescribed by the clerk.

(j) **Immunity.** All ADR roster and pro tem members who serve in the court's ADR Program perform quasi-judicial functions. When acting in their capacity as court-appointed neutrals, the immunities and protections that the law accords to persons serving in such capacity extend to them.

SECTION 3: CONFIDENTIALITY

(a) **Confidentiality in ADR Proceedings.** The court intends through implementation of this ADR program that ADR proceedings offer an alternative to the formal litigation process. To that extent, ADR proceedings must be conducted in a manner that encourages an informal and confidential exchange among counsel, the parties, and the ADR roster member(s) to facilitate resolution of disputes. ADR proceedings will be conducted in private, similar to confidential settlement conferences, whose general purposes they share, as set forth in DUCivR 16-3. Where counsel jointly move that the proceedings for a particular case be opened, the supervising ADR roster member must direct that they be opened.

(b) **Confidentiality in ADR Communications.** Motions, memoranda, exhibits, affidavits, and other oral or written communication submitted by counsel or the parties to the ADR panel member(s) pursuant to the requirements of this plan and at the direction, if any, of the ADR panel member(s), must not be made a part of the record or filed with the clerk of court. Such communication must not be transmitted to the district or magistrate judge to whom the case is assigned except as required elsewhere in this plan. The clerk will file and include in the court's record only the order referring a case to ADR and other ADR scheduling and proceeding notices.

(c) **ADR Member Confidentiality.** Members of the court's ADR roster and members pro tem must preserve and maintain the confidentiality of all ADR

proceedings in which they officiate. They must not disclose to or discuss with anyone, including the designated judge, any information related to the proceedings unless specifically required elsewhere in this plan. ADR members must secure and ensure the confidentiality of ADR proceeding records; at the conclusion of the proceedings, the ADR member shall either return all materials submitted by the parties to the respective parties or destroy them. ADR roster members designated to serve as mediators must keep confidential from other parties any information obtained in individual caucuses that the party to the caucus expressly identifies as confidential.

SECTION 4: SELECTION OF ADR MEMBERS

(a) **Stipulation by the Parties.** The participating parties may select by stipulation ADR roster members for the purpose of conducting alternative dispute resolution proceedings in their action. The parties must notify the clerk of such stipulation within fifteen (15) days of referral of the action into the ADR program. Pursuant to Section 2(b) of this plan, any party may request in writing the appointment of one member pro tem, unless, in an action referred to arbitration, the parties have agreed to use a panel of three (3) arbitrators instead of one (1). In such actions, the parties may request in writing the appointment of up to two (2) members pro tem. Such requests must be served on all other parties. Where all other parties to the matter stipulate to the appointment of the member(s) pro tem, the clerk will forward such requests for appointment of ADR member(s) pro tem to the assigned judge for review and approval.

(b) **Selection by Clerk.** The clerk of court or his designee will appoint an ADR roster member to serve as the neutral if the parties fail to jointly select an ADR roster or member pro tem to serve as the neutral and notify the clerk of their choice within fifteen (15) days of the referral to the ADR program.

SECTION 5: ARBITRATION PROCEEDINGS

A civil action in which, by stipulation or order, arbitration has been designated, will proceed as follows:

(a) **Selection of Panel or Arbitrator.** One (1) ADR member, or member pro tem as authorized by the court, will be selected to conduct the proceeding, unless the participating parties stipulate that the proceeding be conducted by three (3)

arbitrators.[8] The ADR roster member(s) or member(s) pro tem must be selected as provided in Section 4 of this plan. If a panel of three (3) arbitrators is selected, the members of a panel will designate a chair who must be a member of the court's ADR roster. Members pro tem may not serve as arbitration panel chairs.

(b) **Majority Rule.** If a panel of three (3) arbitrators is selected, the concurrence of a majority of the panel is required for any decision, ruling, order, or award by the panel.

(c) **Pre-hearing Conference.**

(1) Scheduling, Purposes, and Participants. Within thirty (30) days after selection of the arbitrator and upon ten (10) days' notice mailed by the clerk to all participating parties, the arbitrator will conduct a pre-hearing conference for the purposes of (i) reviewing the case, (ii) assisting the parties in defining and narrowing the issues, (iii) determining the scope and timing of any discovery, (iv) scheduling the arbitration hearing, and (v) executing an arbitration agreement. All parties or their counsel must attend this conference. The arbitration hearing must be held within one-hundred-twenty (120) days of the date of the pre-hearing conference.

(2) Written and Oral Testimony. Where appropriate in the course of the pre-hearing conference, the arbitrator will (i) encourage the use of stipulations, affidavits, proffers of testimony, written submission of expert opinions, and other time-saving evidentiary tools and procedures, and (ii) instruct the parties to limit live testimony, if any, to the resolution of factual disputes and witness credibility issues. The arbitrator also will instruct the parties that, unless otherwise authorized by the arbitrator or agreed upon by the parties, issues other than those defined in the pre-hearing conference should not be raised at the arbitration hearing and will not be considered in determining any arbitration award.

(3) Location. Unless otherwise agreed by the participating parties and

[8] In cases in which the parties have stipulated that the proceedings be conducted by three (3) arbitrators, references in this rule to the "arbitrator" should be read as referring to the "arbitration panel."

approved by the arbitrator, the arbitration hearing should be held at the Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah.

(4) Arbitration Agreement. During the pre-hearing conference, the parties will execute an arbitration agreement that should conform to this plan and the approved form of arbitration agreement which is available from the clerk of court. Following its execution, the arbitrator or panel chair will notify the clerk of court of the scheduled hearing date. The clerk will mail a hearing notice to each participating party. Under subsection Section 5(p) of this plan, the parties may provide in the final arbitration agreement that the arbitration award be final and binding.

(5) Additional Pre-Hearing Conferences. The arbitrator may schedule additional pre-hearing conferences to facilitate preparation of the arbitration agreement.

(d) Interim Procedural Orders; Rescheduling. The arbitrator has the authority to make such interim procedural orders in furtherance of the purposes of the arbitration proceeding and this plan as are deemed necessary and appropriate (*e.g.*, requiring exchange of witness and exhibit lists, designation of experts, etc.). Upon motion by any party or the arbitrator's own motion, the arbitrator may reschedule the arbitration hearing, provided the hearing is commenced within thirty (30) days of the original date set at the pre-hearing conference. Except as to matters of pre-hearing scheduling, or continuance of the arbitration hearing, no party or counsel for a party may have ex parte contact or communication concerning the case with any ADR roster member(s).

(e) Exhibits; Objections; Waiver. Not fewer than twenty (20) days before the arbitration hearing, a party that intends to offer documentary evidence at the arbitration hearing must serve copies of the exhibits, together with written notice of that party's intention to offer the same, on all participating parties. Not fewer than seven (7) days before the arbitration hearing, each party may serve on the offering party written objection(s) to one or more of the exhibits, specifying the exhibit and the specific ground(s) of objection. Any objections to any exhibit served in accordance with this section based upon any issue of evidentiary foundation, authentication, or hearsay not served as provided in this plan will be deemed to be waived. Each party must mark all original exhibits

and copies prior to the arbitration hearing under DUCivR 83-5.

(f) **Subpoenas.** The presence of witnesses and production of documentary or other evidence at the arbitration hearing may be compelled by subpoena under Fed. R. Civ. P. 45.

(g) **Transcript or Recording.** Any participating party, at that party's own expense and on five (5) days' notice to the arbitrator and participating parties, may make arrangements for stenographic or other recording of the arbitration hearing and a transcript of the proceedings, provided that a copy of the transcript or recording is supplied to the arbitrator at no charge. Video recording will not be permitted. Copies of the transcript or recording must be made available to all participating parties on request and at a reasonable expense.

(h) **Arbitration Hearing.** The arbitration hearing will be commenced at the place, date, and time designated by the arbitrator and will be conducted by the arbitrator. If a panel of three (3) arbitrators is selected, the chair will preside. Each participating party and its counsel should attend the arbitration hearing. The arbitration hearing may proceed in the absence of any party who, after written notice of the scheduling of the hearing, does not appear. At the request of any participating party or the arbitrator, non-party witnesses, except when testifying, will be excluded from the arbitration hearing under Fed. R. Evid. 615. The arbitrator will determine the mode and order of presentation of issues, argument, the testimony of witnesses, and other evidence, limiting the amount of time to which each party is entitled. Except as otherwise set forth in the arbitration agreement, the burden of proof among the parties will be allocated, and presumptions, if any, will apply as if at trial before the court.

(i) **Issues to be Decided.** Absent a stipulation by all parties, the arbitrator will make no determination regarding issues not covered in the arbitration agreement. Where the arbitrator determines that such other issues must be determined in order to render an award, the arbitrator will seek the parties' agreement to do so.

(j) **Evidence; Admissibility; Rules of Evidence.** All oral testimony at the arbitration hearing must be taken under oath or affirmation under Fed. R. Evid. 603 and will be subject to Fed. R. Evid. 501 concerning privileges. The

arbitrator will determine the admissibility of evidence offered at the arbitration hearing. The arbitration hearing should be conducted in conformity with the Federal Rules of Evidence, but the arbitrator may receive evidence otherwise inadmissible under those rules if (i) the arbitrator finds the evidence to be relevant and trustworthy; and (ii) the receipt of that evidence is not unfairly prejudicial to any party against whom it is offered. The arbitrator may take judicial notice of adjudicative facts consistent with Fed. R. Evid. 201.

(k) **Arbitration Award.** The arbitrator will prepare and file with the clerk any award in an arbitration proceeding conducted pursuant to this plan within twenty (20) days of the conclusion of the arbitration hearing. The clerk will mail a copy of the award to all participating parties or their counsel and retain the original under court seal for thirty (30) days. At the conclusion of the thirty (30) days, the clerk will unseal the award and enter judgment under Section 5(m) of this plan. If, prior to expiration of the thirty (30) days, any party to the action files a demand for trial de novo under Section 5(n) of this plan, the clerk will dispose of the original award.

(l) **Form of the Award.** The award must be in writing, signed by the arbitrator, and must state with particularity (i) the name(s) of the prevailing party or parties and the party or parties against whom the award is rendered, and (ii) the precise amount(s) of the award. With respect to monetary relief, the arbitrator may, but is not required to, make findings of fact or otherwise explain the basis of the award. Where equitable or other non-monetary relief is sought, the award must state with particularity the nature and extent of such relief, if any, found to be an appropriate remedy and the factual and legal ground(s) for such relief.

(m) **Entry of Judgment on Award.** Unless a party has filed a demand for trial de novo under Section 5(n) of this plan within thirty (30) days after the filing of the award, the clerk of court will enter judgment on the award in the amount(s) specified in it under Fed. R. Civ. P. 58. If no timely demand for trial de novo has been made with respect to an award granting or denying equitable or other non-monetary relief, the court will enter an order approving the award, and the clerk will enter judgment accordingly.

(n) **Trial De Novo; Written Demand.** Any participating party may file and serve a written demand for trial de novo within thirty (30) days after the filing of the

arbitration award. Where timely demand has been made, the clerk will vacate the award and the case will be withdrawn from the ADR Program.

(o) **Admissibility in Other Proceedings.** No transcript, recording or other record of the arbitration hearing, final arbitration agreement, or award or recommendation filed in a proceeding governed by this plan, will be admissible as evidence for any purpose in a trial de novo or other adjudicative proceeding, unless (i) the evidence is independently admissible under the Federal Rules Evidence, or (ii) the parties otherwise stipulate.

(p) **Binding Arbitration Available.** At any time prior to the issuance of the arbitration award, the parties may agree, by written stipulation, that the award will be final and binding.

SECTION 6: MEDIATION PROCEEDINGS

A civil action in which, by stipulation or order, mediation has been designated as the method of alternative dispute resolution to be employed, will proceed as follows:

(a) **Selection of Mediator.** The participating parties may (i) select by stipulation a mediator from the roster maintained by the clerk of court, or (ii) request the appointment of a member pro tem as provided in Section 2(b) of this plan. In the event that the parties cannot agree, the mediator will be selected as provided in Section 4(b) of this plan.

(b) **Scheduling the Mediation Conference.** Within twenty (20) days following selection and after consultation with the participating parties or their counsel, the mediator will schedule the place, date, and time of the mediation conference, notice of which will be sent by the clerk of court to all participating parties. Unless otherwise agreed by the participating parties and approved by the mediator, the mediation conference will be held at the Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah. The mediator may reschedule the mediation conference at the request of one or more parties or on the mediator's own motion, provided the conference will commence within thirty (30) days of the original scheduled date.

(c) **Pre-conference Memoranda; Agenda.** Unless the parties otherwise agree, each participating party will provide to the mediator a concise memorandum describing that party's position concerning the issue(s) to be resolved through the mediation. This memorandum must be provided at least ten (10) days before the scheduled date of the mediation conference. The mediator may direct that the memoranda be exchanged between participating parties. The mediator may prepare and circulate an agenda for the mediation conference.

(d) **Mediation Conference.** The mediation conference will commence at the place, date, and time set forth in the notice. All participating parties and their counsel must be present and prepared to discuss all relevant issues in the case. The mediator will conduct the mediation conference, determine the length and timing of sessions and recesses, specify the order and manner in which issues and parties' positions are to be addressed, etc. The mediation conference should proceed in a fashion that promotes the goals of the mediation process, preserves confidentiality, and encourages candor. The mediator should serve as a neutral facilitator, assisting the parties in defining and narrowing the issues, and encouraging each party to examine the dispute from various perspectives, without undertaking to decide any issue, make findings of fact, or impose any agreement.

(e) **Separate Consultation with Parties During the Conference.** During the conference, the mediator may meet or consult separately with one or more participating parties, or may divide the conference into groups of fewer than all parties. Information disclosed to the mediator on a confidential basis during separate consultation must not be disclosed to other parties without the consulting party's consent.

(f) **Absent Parties.** On written recommendation by the mediator, or motion by a participating party, the court may order absent parties to show cause why they failed to attend the mediation conference and, if appropriate, why sanctions should not be imposed.

(g) **Termination of the Mediation Conference.** If the mediator determines that the conference is making no substantive progress towards settlement, the mediator may adjourn the mediation conference and report that adjournment in

writing to the clerk of court. By stipulation of at least two adverse participating parties, the mediator may schedule and conduct a second conference. Absent unusual circumstances, such second conferences should be conducted within thirty (30) days of the original mediation conference. If no such stipulation is made, or if no substantive progress is being made at the second conference, the mediator will terminate the mediation conference and report that termination in writing to the clerk of court. Upon receipt of such report, the case will be withdrawn from the ADR program.

(h) **Settlement.** In the event that a settlement as to all issues is reached during the mediation conference, the participating parties should prepare and execute a written settlement agreement and promptly file with the clerk of court a stipulation and order for dismissal of the civil action. In the event that a resolution of fewer than all the issues is reached, the parties should prepare and execute a stipulation concerning those issues which were resolved and identifying those issues which remain in dispute. On filing of the stipulation with the clerk, the case will be withdrawn from the ADR program.

(i) **Confidentiality; Non-admissibility of Proceedings.**

(1) Disclosure Constraints. All proceedings in any mediation conference conducted under this plan, including any communication made by any party, attorney, ~~or~~ representative, or any other person attending the mediation, are conclusively deemed to be made in compromised negotiations within the meaning of Fed. R. Evid. 408. In addition, absent exception under paragraph (2) below, such communications shall not be:

(A) disclosed to anyone not involved in the litigation;
(B) disclosed to the assigned district or magistrate judge, or
(C) used for any purpose, including impeachment, in any pending or future proceedings in this Court.

(2) Limited Exceptions to Confidentiality. This subsection does not prohibit:

(A) disclosures as may be stipulated by all parties and the mediator;

(B) disclosures from mediation proceedings that were open to the

public based on stipulation of all parties;

(C) a report to or an inquiry by the ADR judge or the clerk of court pursuant to DUCivR 16-2(j) regarding a possible violation of this rule or the court's ADR Plan;

(D) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program;

(E) sharing of mediation experience by mediators for training or education purposes, provided the identity of the persons and parties involved in the mediation remain confidential; or

(F) disclosures otherwise required by law

(3) Prohibition on Reproduction or Dissemination of Proceedings. Mediation conferences may not be recorded, transcribed, or published in paper, electronic, digital, audio, or video format without the prior written consent of the parties and the mediator.

(j) **Attendance at Mediation Conference Required**: Counsel and all parties are required to attend the mediation conference(s) in person unless otherwise excused by the mediator upon showing of good cause.

(1) Corporation or Other Entity. If a party is not a natural person, a duly authorized representative or agent of the entity, in addition to outside counsel, must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below. The representative must have settlement authority and knowledge about the facts of the case.

(2) Government Entity. If a party is a unit or agency of government, a duly authorized representative or agent of the entity must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below. The government representative must have, to the greatest extend feasible, (i) authority to settle and knowledge about the facts of the case, (ii) the government entity's position, and (iii) the procedures and policies under which the governmental unit determines whether to accept proposed

settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(3) Insurers. If an insurance carrier is directly or indirectly involved in the outcome of the case, a duly authorized representative of the carrier with knowledge about the facts of the case and settlement authority must attend the mediation conference(s) unless excused by the mediator under paragraph (4) below.

(4) Request to be Excused. A party, representative, attorney, or insurance carrier may be excused by the mediator from attending the mediation conference(s) only after a showing that personal attendance would impose an extraordinary and unnecessary hardship. A person excused from appearing in person at a mediation conference must be available to participate by telephone and must notify in writing, at least forty-eight (48) hours in advance of the mediation conference, all parties in the case and the clerk of court about the appearance by telephone.

DUCivR 16-3 SETTLEMENT CONFERENCES

(a) **Authority for Settlement Conferences**. ~~In any case pending in this court, t~~ The assigned judge may require, or any party may at any time request, the scheduling of a settlement conference.

(b) **Referral of Cases for Purposes of Conducting a Settlement Conference**. Under Fed. R. Civ. P. 16(a)(5) and (c)(9) and 28 U.S.C. § 636(b)(3), the district judge to whom the case has been assigned for trial may refer it, for the purpose of undertaking a settlement conference, either to another district judge or~~, on consultation with the parties and their counsel,~~ to a magistrate judge.

(c) **Settlement Proceedings**. The settlement judge ~~or magistrate judge~~ may require the presence of the parties and their counsel, may meet privately from time to time with one party or counsel, and may continue the settlement conference from day to day as deemed necessary. The settlement judge ~~or magistrate judge~~ may discuss any aspect of the case and make suggestions or recommendations for settlement. Counsel for each party to the settlement conference must ensure that a person or representative with ~~full~~ settlement authority or otherwise authorized to make decisions regarding settlement is available in-person ~~or by telephone during the settlement conference.~~ for the full duration of the settlement conference. If the person present does not have full settlement authority, a person with full settlement authority must be directly available by telephone during the settlement conference.

(d) **Confidential Nature of Settlement Proceedings**. The settlement conference will be conducted in such a way as to permit an informal, confidential discussion among counsel, the parties, and the settlement judge ~~or magistrate judge~~. The settlement judge ~~or magistrate judge~~ may require settlement memoranda to be submitted either with or without service upon the other parties and counsel participating in the settlement conference, but such memoranda must neither be made a part of the record nor filed with the clerk of court. The settlement judge ~~or magistrate judge~~ may not communicate to the trial judge to whom the case has been assigned the confidences of the conference, except to report whether or not the case has been settled. Such report must be made in writing, with copies to the parties and their counsel, within a reasonable time following the conference or within such time as the

trial judge may direct. If the case does not settle, no oral or written communication made during the settlement conference may be used in the trial of the case or for any other purpose.

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DUCivR 23-1 DESIGNATION OF PROPOSED CLASS ACTION

(a) **Caption**. In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action must include within the caption the words "Proposed Class Action."

(b) **Class Allegation Section**. Any pleading purporting to commence a class action shall contain a separate section entitled "Class Action Allegations" setting forth the information required below in subsection (c).

(c) **Class Action Requisites.** The class action allegation section shall address the following:

(1) the definition of the proposed class;
(2) the size of the proposed class;
(3) the adequacy of representation by the class representative;
(4) the common questions of law and fact;
(5) the typicality of claims or defenses of the class representative;
(6) the nature of the notice to the proposed class; and,
(7) if proceeding under Fed. R. Civ. P. 23(b)(3), the additional matters pertinent to the findings as provided by that subdivision.

(d) **Motion for Certification**. Unless the court otherwise orders, the proponent of a class shall file a motion for certification that the action is maintainable as a class action within ninety (90) days after service of a pleading purporting to commence a class action including cross claims and counterclaims. In cases removed or transferred to this court, the motion shall be filed within ninety (90) days of the removal or transfer.

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(5) the typicality of claims or defenses of the class representative;
(6) the nature of the notice to the proposed class; and,
(7) if proceeding under Fed. R. Civ. P. 23(b)(3), the additional matters pertinent to the findings as provided by that subdivision.

(d) **Motion for Certification**. Unless the court otherwise orders, the proponent of a class shall file a motion for certification that the action is maintainable as a class action within ninety (90) days after service of a pleading purporting to commence a class action including cross claims and counterclaims. In cases removed or transferred to this court, the motion shall be filed within ninety (90) days of the removal or transfer.

DUCivR 26-1 DISCOVERY REQUESTS AND DOCUMENTS

(a) **Form of Responses to Discovery Requests**. Parties responding to interrogatories under Fed. R. Civ. P. 33, requests for production of documents or things under Fed. R. Civ. P. 34, or requests for admission under Fed. R. Civ. P. 36 must repeat in full each such interrogatory or request to which response is made. The parties also must number sequentially each interrogatory or request to which response is made.

(b) **Filing and Custody of Discovery Materials.**

(1) Filing. Unless otherwise ordered by the court, counsel must not file with the court the following:

(A) all disclosures made under Fed. R. Civ P. 26 (a)(1);
(B) depositions or notices of taking deposition required by Fed R. Civ. P. 30(b)(1);
(C) interrogatories;
(D) requests for production, inspection or admission; ~~and~~
(E) answers and responses to such requests; and,
(F) certificates of service for any of the discovery materials referenced in (A) through (E).

This section does not preclude the use of discovery materials at a hearing, trial, or as exhibits to motions or memoranda.

(2) Custody. The party serving the discovery material or taking the deposition must retain the original and be the custodian of it.

~~**(c)** **Depositions Under Seal**. Unless otherwise ordered by the court, at the request of any attorney of record in the case, the clerk may open the original of any deposition which has been filed with the court in accordance with this rule. The clerk will note on the deposition the date and time at which the deposition was opened. The deposition may not be removed from the clerk's office. This section applies to all depositions, whether recorded by stenographic or non-stenographic means.~~

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This section does not preclude the use of discovery materials at a hearing, trial, or as exhibits to motions or memoranda.

(2) Custody. The party serving the discovery material or taking the deposition must retain the original and be the custodian of it.

DUCivR 26-2 EFFECT OF FILING A MOTION FOR PROTECTIVE ORDER

A properly noticed deposition will not be stayed by the filing of a motion for a protective order, absent entry by the court of a separate order staying the deposition.

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A properly noticed deposition will not be stayed by the filing of a motion for a protective order, absent entry by the court of a separate order staying the deposition.

DUCivR 45-1 PRIOR NOTICE OF SUBPOENA FOR NON PARTY

A copy of any subpoena that is (i) directed to a nonparty, and (ii) commands production of documents and things or inspection of premises before trial shall be served on each party as prescribed by Rule 5(b). Such service shall be made at least five (5) days prior[9] to service of the subpoena on the nonparty. Service on other parties under Rule 5(b)(2)(B), (C) or (D)[10] shall be made at least eight (8) days prior to service of the subpoena on the nonparty.[11]

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[9] The word "prior" reflects the use of "prior" in Fed. R. Civ. P. 45 (b)(1) which requires that "[p]rior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b)."

[10] Fed. R. Civ. P. 5 (b) reads:

(b) **Making Service**.

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(3) If the person served has no known address, leaving a copy with the clerk of the court.

(4) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

[11] This phrase is meant to add a three day period similar to that provided under Fed. R. Civ. P. 6(e) which extends time *after* service. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

DUCivR 45-1 PRIOR NOTICE OF SUBPOENA FOR NON PARTY

A copy of any subpoena that is (i) directed to a nonparty, and (ii) commands production of documents and things or inspection of premises before trial shall be served on each party as prescribed by Rule 5(b). Such service shall be made at least five (5) days prior[12] to service of the subpoena on the nonparty. Service on other parties under Rule 5(b)(2)(B), (C) or (D)[13] shall be made at least eight (8) days prior to service of the subpoena on the nonparty.[14]

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[12] The word "prior" reflects the use of "prior" in Fed. R. Civ. P. 45 (b)(1) which requires that "[p]rior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b)."

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(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(3) If the person served has no known address, leaving a copy with the clerk of the court.

(4) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

[14] This phrase is meant to add a three day period similar to that provided under Fed. R. Civ. P. 6(e) which extends time *after* service. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL DECISION

(a) **Response to Objection to Nondispositive Pretrial Decision.** Any party opposing an objection to a magistrate judge's order pursuant to Fed. R. Civ. P. 72(1) and 28 U.S.C. § 636(b)(1)(a) may file a response within ten (10) days after the objection has been filed.

(b) **Stays of Magistrate Judge Orders.** Pending a review of objections, motions for stay of magistrate judge orders shall be addressed initially to the magistrate judge.

DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL DECISION

(a) **Response to Objection to Nondispositive Pretrial Decision.** Any party opposing an objection to a magistrate judge's order pursuant to Fed. R. Civ. P. 72(1) and 28 U.S.C. § 636(b)(1)(a) may file a response within ten (10) days after the objection has been filed.

(b) **Stays of Magistrate Judge Orders.** Pending a review of objections, motions for stay of magistrate judge orders shall be addressed initially to the magistrate judge.

DUCivR 77-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

(a) **Office of Record.** The court's office of record is located in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101. ~~The court also maintains an unstaffed clerk's office and a chambers/courtroom facility in the Federal Building, 324 - 25th Street, Ogden, Utah, for occasional use by district court judges, magistrate judges, and bankruptcy court judges for trials and other court activity.~~

(b) **U.S. Courts Law Library.** The United States Courts Law Library in the Moss Courthouse contains non-circulating legal reference books, periodicals, and related materials. Access to the library is available to the bar and the public when the librarian is on duty during ~~the days and hours specified in section (c) of this rule~~ normal court business hours.

(c) **Hours and Days of Business.** Unless otherwise ordered by the court in unusual circumstances, the office of the clerk ~~at this location~~ will be open to the public during regularly posted business hours ~~between the hours of 8:30 a.m. and 5:00 p.m.~~ on all days except Saturdays, Sundays, and legal holidays as set forth below. Court hours and days of business are posted on the court's website at http://www.utd.uscourts.gov

The following are holidays on which the court will be closed:

- New Year's Day, January 1
- Birthday of Martin Luther King, Jr. (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day, July 4
- Pioneer Day, July 24
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans' Day, November 11
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

(d) **After Hours Filing.** The court maintains for the convenience of the public and the bar a seven (7) day, twenty-four (24) hour filing box at the south Main

Street entrance to the Frank E. Moss United States Courthouse. The box is equipped with a time/date stamp, and case-related pleadings, motions, proposed orders, and other papers that are stamped and deposited in the box will be filed by the clerk on the time/date they were so stamped and deposited.

DUCivR 77-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

(a) **Office of Record.** The court's office of record is located in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101.

(b) **U.S. Courts Law Library.** The United States Courts Law Library in the Moss Courthouse contains non-circulating legal reference books, periodicals, and related materials. Access to the library is available to the bar and the public when the librarian is on duty during normal court business hours.

(c) **Hours and Days of Business.** Unless otherwise ordered by the court in unusual circumstances, the office of the clerk will be open to the public during regularly posted business hours on all days except Saturdays, Sundays, and legal holidays as set forth below. Court hours and days of business are posted on the court's website at http://www.utd.uscourts.gov

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- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

(d) **After-Hours Filing.** The court maintains for the convenience of the public and the bar a seven (7) day, twenty-four (24) hour filing box at the south Main Street entrance to the Frank E. Moss United States Courthouse. The box is equipped with a time/date stamp, and case-related pleadings, motions, proposed orders, and other papers that are stamped and deposited in the box will be filed by the clerk on the time/date they were so stamped and deposited.

DUCivR 79-1 ACCESS TO COURT RECORDS

(a) Access to Public Court Records.

(1) Access via Internet. Cases filed after May 2, 2005, are available for review electronically via the court's website. To access the electronic case file, users must first register for Public Access to Court Electronic Records (PACER) either online or by telephone. Instructions are available at the court's website. Lengthy exhibits, transcripts of court proceedings, and other supporting documents may be accessible only in paper format at the office of the clerk of court. Some cases filed prior to May 2, 2005, also may be accessible electronically through PACER. PACER users are subject to a modest per page charge for case information that is downloaded.

(2) Access in the Office of the Clerk. The public records of the court are available for examination in the office of the clerk during the normal business hours and days specified in DUCivR 77-1. Cases filed after May 2, 2005 are accessible in electronic format. Paper files of cases filed prior to May 2, 2005 may not be removed from the clerk's office by members of the bar or the public. However, ~~but~~ the clerk of court will make and furnish copies of official public court records upon request and upon payment of the prescribed fees.

(b) Sealed or Impounded Records. Records or exhibits ordered sealed or impounded by the court are not public records within the meaning of this rule.

(c) Search for Cases by the Clerk. The office of the clerk is authorized to conduct searches of the most recent ten years of the master indices maintained by the clerk of court and to issue a certificate of such search. Pursuant to the fee schedule, the clerk will charge a fee, payable in advance, for each name for which a search is conducted.

DUCivR 79-1 ACCESS TO COURT RECORDS

(a) Access to Public Court Records.

(1) Access via Internet. Cases filed after May 2, 2005, are available for review electronically via the court's website. To access the electronic case file, users must first register for Public Access to Court Electronic Records (PACER) either online or by telephone. Instructions are available at the court's website. Lengthy exhibits, transcripts of court proceedings, and other supporting documents may be accessible only in paper format at the office of the clerk of court. Some cases filed prior to May 2, 2005, also may be accessible electronically through PACER. PACER users are subject to a modest per page charge for case information that is downloaded.

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(b) Sealed or Impounded Records. Records or exhibits ordered sealed or impounded by the court are not public records within the meaning of this rule.

See DUCivR 5-2, Filing Cases and Documents Under Court Seal, and DUCivR 83-5, Custody and Disposition of Trial Exhibits

(c) Search for Cases by the Clerk. The office of the clerk is authorized to conduct searches of the most recent ten years of the master indices maintained by the clerk of court and to issue a certificate of such search. Pursuant to the fee schedule, the clerk will charge a fee, payable in advance, for each name for which a search is conducted.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) **Practice Before the Court.** Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

(b) **Admission to the Bar of this Court.**

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.

(2) Admissions Procedure.

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.

(B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made.

(C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to sections (a) and (d) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

(D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:
"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States ~~and the~~

~~constitution of the State of Utah~~; that I will discharge the duties of attorney and counselor at law as an officer of the ~~courts of the State of Utah and the~~ United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah." [15]

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately ~~within thirty (30) days~~ if they have a change in name, e-mail address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

(c) Active Member Status Requirement. Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in DUCivR 83-1.2.

(d) Admission Pro Hac Vice. Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:

(1) Application and Fee. Applicants must complete and submit to the clerk an application form available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification

[15] For ceremonies conducted jointly with the Utah State Bar, the oath also will reference the Utah State Constitution and the Utah State Courts.

number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee. Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement ~~but must conform to the other pro hac vice admission requirements of this rule~~. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the District of Utah is recused from the case, the associate local counsel requirement is waived.

(2) Motion for Admission. Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(e) Participation of Associate Local Counsel. Where an attorney who has been admitted is a nonresident, that attorney must associate a local member of this court's bar who must sign the first pleading filed and who must continue in the case unless another active local member of this court's bar is substituted. If the nonresident attorney fails to respond to any order of the court, for appearance or otherwise, the associated local attorney will have the responsibility and full authority to act for and on behalf of the client in all proceedings in connection with the case, including hearings, pretrial conferences, and trial.

(f) Attorneys for the United States. Attorneys representing the United States government or any agency or instrumentality thereof and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing

agencies of the government will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorneys" by the United States Attorney for the District of Utah or "Special Attorneys" by the Attorney General of the United States, and (ii) are members in good standing of the highest bar of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

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(g) **Pro Se Representation.** Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved. Such parties also shall notify the clerk immediately in writing if they have any change in name, mailing address, and other relevant contact information.

(h) **Standards of Professional Conduct.** All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) **Practice Before the Court.** Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

(b) **Admission to the Bar of this Court.**

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.

(2) Admissions Procedure.

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.

(B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made.

(C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to sections (a) and (d) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

(D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:
"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States; that I will

discharge the duties of attorney and counselor at law as an officer of the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah." [16]

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately if they have a change in name, e-mail address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

(c) Active Member Status Requirement. Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in DUCivR 83-1.2.

(d) Admission Pro Hac Vice. Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:

(1) Application and Fee. Applicants must complete and submit to the clerk an application form available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed

[16] For ceremonies conducted jointly with the Utah State Bar, the oath also will reference the Utah State Constitution and the Utah State Courts.

with the application. The application also must be accompanied by payment of the prescribed admission fee. Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the District of Utah is recused from the case, the associate local counsel requirement is waived.

(2) Motion for Admission. Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(e) Participation of Associate Local Counsel. Where an attorney who has been admitted is a nonresident, that attorney must associate a local member of this court's bar who must sign the first pleading filed and who must continue in the case unless another active local member of this court's bar is substituted. If the nonresident attorney fails to respond to any order of the court, for appearance or otherwise, the associated local attorney will have the responsibility and full authority to act for and on behalf of the client in all proceedings in connection with the case, including hearings, pretrial conferences, and trial.

(f) Attorneys for the United States. Attorneys representing the United States government or any agency or instrumentality thereof and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing agencies of the government will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of

this court. Attorneys who (i) are designated as "Special Assistant United States Attorneys" by the United States Attorney for the District of Utah or "Special Attorneys" by the Attorney General of the United States, and (ii) are members in good standing of the highest bar of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

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(g) **Pro Se Representation.** Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved. Such parties also shall notify the clerk immediately in writing if they have any change in name, mailing address, and other relevant contact information.

(h) **Standards of Professional Conduct.** All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

(a) **General Requirement.** All attorneys admitted to the practice of law before this court must register with the clerk on or before the first day of July of each year following their admission. Each registrant must certify on the form provided by the clerk to:

(1) having read and being familiar with the District Court Rules of Practice, the Utah Rules of Professional Conduct, and the Utah Standards of Professionalism and Civility; and

(2) being a member in good standing of the Utah State Bar and the bar of this court.

(b) **Categories of Membership.** All registrants for membership in the bar of this court must request on their annual registration form one of two categories of membership, as set forth below:

(1) Active Membership. All attorneys who practice in this court are required to maintain their membership in the court's bar in *active* status. Such status must be renewed annually and requires payment of a registration fee except where specifically exempted by this rule.

(2) Inactive Membership. Attorneys who wish to remain a member of the bar of the court but who have retired or no longer practice in this court may maintain their membership in inactive status by so notifying the clerk in writing. Attorneys filing such notice are be ineligible to practice in this court until reinstated to active status under such terms as the court may direct.

(3) Exemptions. Judges who are barred by law or rule from the practice of law are exempt from payment of the registration fee for active membership status.

(c) **Non-Member Status.** Attorneys who are members but who wish to relinquish their membership status must notify the clerk in writing of their intent. Upon receiving such notification, the clerk will remove their names from the court's roll of attorneys.

(d) **Failure to Register.** Attorneys who do not register with the court, who fail to pay the required fee on an annual basis, or who otherwise fail to notify the court of their intentions will receive notice via first class mail at their last-known address from the clerk of court that their right to practice in this court will be summarily suspended if they do not comply with the registration requirements within thirty (30) days of the mailing of such notice. Attorneys so suspended will be ineligible to practice in this court until their membership has been reinstated under such terms as the court may direct, including application and payment of any delinquent registration fees and payment of such additional amount as the court may direct.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

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DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) **Withdrawal ~~and Substitution~~.** No attorney shall be permitted to withdraw ~~or be substituted~~ as attorney of record in any pending action, thereby leaving a party without representation, except by written application and by order of the court. All applications for withdrawal must set forth the reasons therefor.~~, together with the name, address, and telephone number of the client, as follows:~~

(1) With Client's Consent. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the application and must be accompanied by a separate proposed written order and may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of such order to the client and to all other parties or their attorneys. ~~For attorneys representing the United States or any agency thereof, it is not necessary for the client's signature to appear on the application provided that the client's consent to the withdrawal and substitution of counsel is acknowledged by counsel for all For attorneys representing the United States or any agency thereof, it is not necessary for the client's signature to appear on the application provided that the client's consent to the withdrawal and substitution of counsel is acknowledged by counsel for all parties.~~

(2) Without Client's Consent. Where the withdrawing attorney has not obtained the written consent of the client, the application must be in the form of a motion that must be served upon the client and all other parties or their attorneys. The motion must be accompanied by a certificate of the moving attorney that (i) the client has been notified in writing of the status of the case including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or (ii) the client cannot be located or, for whatever other reason, cannot be notified of the pendency of the motion and the status of the case.

(3) After Trial Date is Scheduled. No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the application includes an endorsement signed by a substituting attorney indicating that

such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes an endorsement signed by the client indicating that the client is advised of the time and date and will be prepared for trial; or (iii) the court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw. ~~Where counsel is substituted, the application must state the name, address, telephone number, and, where applicable, Utah State Bar identification number of the substituting counsel.~~

(b) **Responsibilities of Party Upon Removal.** Whenever an attorney withdraws or dies, is removed or suspended, or for any other reason ceases to act as attorney of record, the party represented by such attorney must notify the clerk of the appointment of another attorney or of his decision to appear pro se within twenty (20) days or before any further court proceedings are conducted. ~~If substituting counsel, the party also must provide the clerk with the name, current telephone number, address, and, where applicable, Utah State Bar identification number of substituting counsel. If the party is proceeding pro se, the party must provide the party's address and telephone number to the clerk.~~

(c) **Substitution.** Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a notice of substitution of counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) **Withdrawal.** No attorney shall be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except by written application and by order of the court. All applications for withdrawal must set forth the reasons therefor.

(1) With Client's Consent. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the application and must be accompanied by a separate proposed written order and may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of such order to the client and to all other parties or their attorneys.

(2) Without Client's Consent. Where the withdrawing attorney has not obtained the written consent of the client, the application must be in the form of a motion that must be served upon the client and all other parties or their attorneys. The motion must be accompanied by a certificate of the moving attorney that (i) the client has been notified in writing of the status of the case including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or (ii) the client cannot be located or, for whatever other reason, cannot be notified of the pendency of the motion and the status of the case.

(3) After Trial Date is Scheduled. No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the application includes an endorsement signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes an endorsement signed by the client indicating that the client is advised of the time and date and will be prepared for trial; or (iii) the court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw. :

(b) **Responsibilities of Party Upon Removal.** Whenever an attorney withdraws or dies, is removed or suspended, or for any other reason ceases to act as attorney of record, the party represented by such attorney must notify the clerk

of the appointment of another attorney or of his decision to appear pro se within twenty (20) days or before any further court proceedings are conducted.

(c) **Substitution.** Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a notice of substitution of counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.

DUCivR 83-1.6 ATTORNEYS - STUDENT PRACTICE RULE

(a) **Entry of Appearance on Written Consent of Client and Supervising Attorney**. An eligible law student may enter an appearance in any civil or ~~misdemeanor~~ criminal case before this court provided that the client on whose behalf the student is appearing and the supervising attorney have filed a written consent with the clerk.

(b) **Law Student Eligibility.** An eligible law student must:

(1) Be enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent graduate of such a school awaiting either (i) the first sitting of the bar examination, or (ii) the result of such examination;

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the course work schedule is on some basis other than semesters;

(3) Be certified in writing by an official of the law school designated by the dean as having the good character, competent legal ability, and necessary qualifications to provide the legal representation permitted by this rule;

(4) Have a working knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of Professional Conduct, and the District Court Rules of Practice; and

(5) Neither ask for nor receive any kind of compensation or remuneration from any client on whose behalf the student renders services; however, the student may be paid a set salary or hourly wage by an employing lawyer, law firm, government office, or other entity providing legal services to the extent that the employer does not charge or otherwise seek reimbursement from the client for the services rendered by the student.

(c) **Responsibilities of Supervising Attorney.** A supervising attorney must:

(1) Be a member in good standing of the bar of this court;

(2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided in Appendix VIII to these rules;

(3) File with the clerk a consent agreement to supervise the student in the form provided in Appendix IX to these rules;

(4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided in Appendix X to these rules;

(5) Assume personal professional responsibility for the quality of the student's work and be available for consultation with represented clients;

(6) Guide and assist the student in all activities undertaken by the student and permitted by this rule to the extent required for the proper practical training of the student and the protection of the client;

(7) Sign all pleadings or other documents filed with the court; the student may also co-sign such documents;

(8) Be present with the student at all court appearances, depositions, and at other proceedings in which testimony is taken;

(9) Be prepared to promptly supplement any of the student's oral or written work as necessary to ensure proper representation of the client.

(d) **Scope of Representation.** Unless otherwise directed by a judge or magistrate judge, an eligible law student, supervised in accordance with this rule, may:

(1) Appear as assistant counsel in civil and ~~misdemeanor~~ criminal proceedings on behalf of any client, including federal, state or local government bodies provided that the written consent of the client and

the supervising attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.

(2) Appear as assistant counsel when depositions are taken on behalf of any client in civil and ~~misdemeanor~~ criminal cases when written consent of the client and the supervising attorney and the dean's certification previously have been filed with the clerk.

(3) Co-sign motions, applications, answers, briefs, and other documents in civil and ~~misdemeanor~~ criminal cases after their review, approval and signature by the supervising attorney.

(e) **Law School Certification.** Certification of a student by the law school official must be (i) in the form provided in Appendix X to these rules, (ii) filed with the clerk, and (iii) unless sooner withdrawn, remain in effect for twelve (12) months unless otherwise ordered by a judge or magistrate judge. Certification will automatically terminate if the student (i) does not take the first scheduled bar examination following graduation, (ii) fails to achieve a passing grade in the bar examination, or (iii) is otherwise admitted to the bar of this court. Certification of a student may be withdrawn for good cause by the designated law school official.

DUCivR 83-1.6 ATTORNEYS - STUDENT PRACTICE RULE

(a) **Entry of Appearance on Written Consent of Client and Supervising Attorney**. An eligible law student may enter an appearance in any civil or criminal case before this court provided that the client on whose behalf the student is appearing and the supervising attorney have filed a written consent with the clerk.

(b) **Law Student Eligibility.** An eligible law student must:

(1) Be enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent graduate of such a school awaiting either (i) the first sitting of the bar examination, or (ii) the result of such examination;

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the course work schedule is on some basis other than semesters;

(3) Be certified in writing by an official of the law school designated by the dean as having the good character, competent legal ability, and necessary qualifications to provide the legal representation permitted by this rule;

(4) Have a working knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of Professional Conduct, and the District Court Rules of Practice; and

(5) Neither ask for nor receive any kind of compensation or remuneration from any client on whose behalf the student renders services; however, the student may be paid a set salary or hourly wage by an employing lawyer, law firm, government office, or other entity providing legal services to the extent that the employer does not charge or otherwise seek reimbursement from the client for the services rendered by the student.

(c) **Responsibilities of Supervising Attorney.** A supervising attorney must:

(1) Be a member in good standing of the bar of this court;

(2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided in Appendix VIII to these rules;

(3) File with the clerk a consent agreement to supervise the student in the form provided in Appendix IX to these rules;

(4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided in Appendix X to these rules;

(5) Assume personal professional responsibility for the quality of the student's work and be available for consultation with represented clients;

(6) Guide and assist the student in all activities undertaken by the student and permitted by this rule to the extent required for the proper practical training of the student and the protection of the client;

(7) Sign all pleadings or other documents filed with the court; the student may also co-sign such documents;

(8) Be present with the student at all court appearances, depositions, and at other proceedings in which testimony is taken;

(9) Be prepared to promptly supplement any of the student's oral or written work as necessary to ensure proper representation of the client.

(d) **Scope of Representation.** Unless otherwise directed by a judge or magistrate judge, an eligible law student, supervised in accordance with this rule, may:

(1) Appear as assistant counsel in civil and criminal proceedings on behalf of any client, including federal, state or local government bodies provided that the written consent of the client and the supervising

attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.

(2) Appear as assistant counsel when depositions are taken on behalf of any client in civil and criminal cases when written consent of the client and the supervising attorney and the dean's certification previously have been filed with the clerk.

(3) Co-sign motions, applications, answers, briefs, and other documents in civil and criminal cases after their review, approval and signature by the supervising attorney.

(e) **Law School Certification.** Certification of a student by the law school official must be (i) in the form provided in Appendix X to these rules, (ii) filed with the clerk, and (iii) unless sooner withdrawn, remain in effect for twelve (12) months unless otherwise ordered by a judge or magistrate judge. Certification will automatically terminate if the student (i) does not take the first scheduled bar examination following graduation, (ii) fails to achieve a passing grade in the bar examination, or (iii) is otherwise admitted to the bar of this court. Certification of a student may be withdrawn for good cause by the designated law school official.

DUCivR 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The taking of photographs; the making of mechanical, electronic, digital, or similar records in the courtroom and areas immediately adjacent thereto in connection with any judicial proceeding, including recesses; and the broadcasting of judicial proceedings by radio, television, telephone, or other devices or means, are prohibited. In addition, the advertising or posting of audio, video, or other forms of recordings or transcripts of court proceedings made in violation of this rule on any Internet website or other means of transmitting such information via electronic means is prohibited. Violation of these prohibitions is sanctionable by the court.

The court, however, may permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, naturalization, and other similar proceedings. The court also may permit the use of electronic, digital, mechanical, or photographic means for the presentation of evidence, for perpetuation of a record, or as otherwise may be authorized by the court.

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DUCrimR 9-1 ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS

(a) **Summons or Warrant Request Upon Indictment, Information, or Complaint.** When a complaint is filed under Fed. R. Crim. P. 4(a), a summons request may be made either orally or in writing. A summons must be issued upon the filing of an indictment or information unless the government (i) submits to the court a written request for a warrant or (ii) specifically requests no service of process. A warrant request must include a brief statement of the facts justifying the arrest of the defendant. A warrant may be issued on an information only if it is accompanied by a written probable cause statement given under oath.

(b) **Warrant Upon Failure to Appear.** If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.

~~**(c)** **Use of Form AO 257.** Any request for a summons or a warrant should be indicated as additional information on Form AO 257 (*Defendant Information Relative to a Criminal Action*) that is required as part of the filing of a criminal action in the court. Copies of the form are available from the clerk of court.~~

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(b) **Warrant Upon Failure to Appear.** If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS

(a) **Timing.** Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than ten (10) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

(b) **Form**. Motions must set forth succinctly, but without argument, the specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits. The court, in its discretion, may set a hearing for any such motion.

(1) Supporting Memoranda.

(A) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum or supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

(i) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court; ~~and~~

(ii) to continue either a pretrial hearing or motion hearing.; and

(iii) for motions to suppress unless directed by the court.

(B) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations.

(C) Length of Memoranda; Filing Times. There are no page limits to memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within fifteen (15) days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.

(D) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party‘s memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(2) Failure to Respond. Failure to respond timely to a motion may result in the court’s granting the motion without further notice.

(3) Oral Argument on Motions. The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time,

and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

(c) **Notification of Oral Testimony**. When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.

(d) **Motion to Suppress Evidence**. A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion. unless the court has directed pre-trial briefing or otherwise concludes that further briefing is unnecessary.

(e) **Certification by Government**. Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

(f) **Preparation of Entry of Order.** When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within five (5) days after personal service or eight (8) days after service by mail.

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS

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DUCrimR -47-2 CONSTRAINTS ON DISCLOSING PERSONAL DATA IN CRIMINAL FILINGS

(a). **Responsibility of Counsel for Redaction of Personal Identifiers.** Unless otherwise provided by court order, counsel and parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all criminal motions, pleadings, affidavits, exhibits, and other documents filed with the court either in paper or electronic format:

(1) Social Security Numbers. If a document requires reference to a Social Security number, only the last four digits of that number shall be included;
(2) Names of Minor Children. If a document requires reference to a minor child, only the initials of the child's name shall be included.
(3) Dates of Birth. If a document requires reference to any dates of birth, only the year shall be included.
(4) Financial Account Numbers. If a document requires reference to financial account numbers, only the last four digits of those numbers shall be included.
(5) Home Addresses. If a document requires reference to a home address, only the city and state shall be included.

Responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review any document submitted for filing to determine whether it complies with this rule.

(b). **Submission of Unredacted Filings Under Seal.** Where a party deems it necessary to file a motion, pleading, document, or exhibit with unredacted personal data identifiers, the party may do so under seal pursuant to and in compliance with DUCrimR 17-1 or DUCrimR 49-2(b) of these rules. The court, may, however, still require the party to file a redacted copy for the public file.

(c). **Exercising Caution With Filings Containing Personal Information.** Parties are strongly encouraged to exercise caution and to inform themselves of any applicable legal prohibitions when filing any documents that contain personal information, including the following:

(1) any personal identifying number, such as driver's license number;
(2) medical records, treatment and diagnosis;
(3) employment history;
(4) individual financial information;
(5) proprietary or trade secret information;
(6) information regarding an individual's cooperation with the government;
(7) information regarding the victim of any criminal activity;
(8) national security information; and
(9) sensitive security information as described in 49 U.S.C. § 114(s).

If any party or attorney deems it necessary to include such personal information in a document intended for filing with the clerk, they shall carefully consider filing a motion to seal such document pursuant to DUCrimR 17-1 or DUCrimR 49-2(b).

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